TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~510.~~ 120

A. W. NORCROSS, F. W. PERKINS, AND R. F. HERSEY, LIBELANTS, APPELLANTS,

vs.

THE STEAMBOAT "LAURA," HER TACKLE, ETC., LOUIS FRIGERIO ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 1, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 319.

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1 *Circuit court of the United States, fifth circuit, and district of Louisiana. No.* 4072. *Transcript of appeal filed September, 27th,* 1866. *Proceedings before the U. S. district court.*

U. S. district court, eastern district of Louisiana.

A. W. NORCROSS, F. W. PERKINS, & R. F. Hersey, *vs.* STEAMBOAT LAURA. } No. 8357.

Libel.—Filed Jan'y 23, 1866.

To the Honorable E. H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of A. W. Norcross, F. W. Perkins, & R. F. Hersey, all of the city of New Orleans, Louisiana, doing business therein as partners, under the firm-name and style of "Norcross, Perkins & Hersey," against the Steamboat Laura, her tackle, apparel, and other furniture, & all persons lawfully intervening for their interests in the same, and
2 personally against Louis Frigerio, jr., owner and manager of said steamboat, in a cause civil and maritime, alleges as follows:

First. That your libellants, before and at the time of the collision, wrongful seizure, and tort, hereinafter set forth and described, were the owners and proprietors of a certain steamboat called the W. B. Savory, with her steam-engine, boilers, machinery, tackle, apparel, and other furniture, which said steamboat your libellants used & employed in transporting freight between the port of New Orleans and the New Basin therein, in the parish of Orleans, State of Louisiana, and the ports of Madisonville and Covington, in the parish of St. Tammany, in said State, and between which ports she was regularly and daily plying, for the purposes aforesaid.

Second. That on Saturday, the 19th day of January, A. D. 1866, the said steamboat W. B. Savory, with her steam-engine, boilers, fixtures, apparel, and other furniture on board thereof, was safely anchored in said Lake Pontchartrain, off of, and near, the port called Lakeport, in the parish of Orleans, and within a half mile of the shore at said port, where she had a perfect right to be.

3 Third. That at the request of the master of the said steamboat W. B. Savory, the said steamboat Laura took from her a portion of her crew & conveyed them to land, & that thereupon said steamboat Laura, without the request or permission of the master of said steamboat W. B. Savory, or any one representing her, and when she was neither abandoned nor in need of assistance, under the direction and at the instance of said Louis Frigerio, jr., did wrongfully take the said steamboat W. B. Savory from her anchorage, and tow her out into the said Lake Pontchartrain, and there sunk her. Whereby with her steam-engine, tackle, apparel, furniture, and freight, she became a total loss.

That the acts above complained of, were not done with any purpose on the part of said Frigerio, or the master of said steamboat Laura, to save said steamboat W. B. Savory, & were conducted with such improper and unskillful management as would in any event have rendered her destruction inevitable.

That at the time of said illegal taking, said steamboat W. B. Savory, had on board and in tow a freight of the value of two thousand dollars.

Fourth. That the said Louis Frigerio, jr., owner or agent of said steamboat Laura, was on board said steamooat at the time of said
4 unlawful taking hereinbefore set forth, and that the said illegal taking and sinking were with his full knowledge and consent.

Fifth. That said steamboat W. B. Savory, with her tackle, apparel, and other furniture was of the value of ten thousand dollars to libellants, and that her freight was of the said value of two thousand dollars, and that libellants have sustained damage by the taking and sinking of said steamer, tackle, furniture, apparel, and freight, to their trade as common carriers between the said ports of New Orleans and Madisonville and Covington, to the amount of five thousand dollars; that the total amount of the loss and damage sustained by libellants is seventeen thousand dollars.

Sixth. That said steamboat Laura is now lying in the port of said Lakeport, parish of Orleans, and within the admiralty jurisdiction of this court.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore libellants pray that process, in due form of law, according to the course of this hon'ble court in cases of admiralty & mara-
5 time jurisdiction, may issue against the said Steamboat Laura, her tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid; that Louis Frigerio, jr., be personally cited to appear and answer this libel, and that after due proceedings had, this hon. court would be pleased to decree the payment of the loss and damages as aforesaid, to wit, seventeen thousand dollars, together with the costs of this proceeding; that said Steamboat Laura may be condemned and sold to pay the same, and in case that the proceeds of the said sale shall not be sufficient to pay said loss & damage, that the libellants have judgment in personam against said Louis Frigerio, jr., for any deficiency; or if this hon. court should adjudge that the premises establish no right on the part of the libellants to resort to said steamboat, then and in that case, the libellants may have judgment for the full amount of said loss, damages, and costs, in personam, against said Louis Frigerio, jr., & that the libellants may have such other and further relief, as in law and justice they may be entitled to receive in the
6 premises and from this hon. court.

(Signed) F. W. PERKINS..

(Signed) SULLIVAN, BILLINGS & HUGHES,
Proctors for Libellants.

Subscribed & sworn to this 23d day of January, A. D. 1866, before me.

(Signed) K. LOEW,
D'y Clk.

Order.

Let admiralty process issue as prayed for.
Jan'y 23d, 1866.

(Signed) K. LOEW,
D'y Clk.

Bond for costs.—Filed with libel January 23d, 1866.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss., to wit:

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid, Norcross, Perkins and Hersey, by W. F. Hersey, as principal, and W'm E. Fitzgerald of the city of New Orleans, as surety, do hereby acknowledge themselves, jointly and severally, to be indebted unto the St'b't Laura & Louis Frigerio, jr., in the full sum of two hundred and fifty dollars, lawful money of the United States, to be levied of their goods, chat-
7 tels, lands, and tenements, for the use of the said St'b't Laura, & L. Frigerio, jr., and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas in the matter of Norcross, Perkins and Hersey, vs. The St'b't Laura, No. 8357 of the docket of the dist. court of the United States for the eastern district of Louisiana, a libel has been filed on behalf of Norcross, Perkins and Hersey:

This obligation to be null and void, on condition that the said Norcross, Perkins & Hersey, shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages, as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise this obligation to remain in full force and virtue.

(Signed) NORCROSS, PERKINS & HERSEY. [L. S.]
" W'M E. FITZGERALD. [L. S.]

Signed & sealed at the city of New Orleans this 23 day of January, 1866, in presence of—

(Signed) K. LOEW,
Clerk to U. S. Commissioner in and for the Eastern District of Louisiana.

8 *Admiralty warrant.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamboat Laura, her tackle, apparel, and furniture, now libelled by A. W. Norcross, F. W. Perkins, and R. F. Hersey, for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest, in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause if any they have or can, why the said steamboat should not be condemned and sold, agreeably to the prayer of the libellant, and how you have executed this warrant, that you make return according to law.

9 Witness the Honorable Edward H. Durell, judge of the said court, at New Orleans, this 23 day of January, 1866, and the 90th year of the independence of the United States.

(Signed) K. LOEW, *D'y Cl'k.*

Marshal's return.

Received January 23, 1866, and on the same day, month, and year seized and took into the U. S. marshal's possession the steamboat Laura, her tackle, apparel, and furniture, and served a copy of this warrant, the libel and order on L. Frigerio, jr., agent of the owners of said steamboat, and published the monition in the Southern Star, a daily newspaper, printed and published in this city, on the 24th & 30 Jan'y, and 6 & 12 Feb'y, 1866.

New Orleans, Feb'y 12, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Monition.

A. W. NORCROSS, F. W. PERKINS, & R. F. HERSEY, *vs.* STEAMBOAT LAURA, TACKLE, APPAREL, &C. } No. 8357.

In the U. S. district court eastern district of Louisiana.

10 In obedience to an admiralty warrant to me directed in the above-entitled suit, I have seized and taken into my possession the steamboat Laura, her tackle, apparel, furniture. machinery, &c., now libelled by A. W. Norcross, F. W. Perkins, & R. F. Hersy, for the reasons set forth in the libel now pending in the district court of the United States. And I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having or pretending to have, any right, title, or interest in or to the same, to be & appear at a district court of the U. S. for the district of Louisiana, to be holden at the city of New Orleans on or before the 3d Monday from the date hereof, to show cause, if any they have or can, why the said steamboat Laura, &c., should not be condemned, & be sold agreeably to the prayer of libellants.

U. S. Marshal's Office, New Orleans, 23d day of January, 1866.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Citation to Louis Frigerio, jr.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Louis Frigerio, jr., a
11 citizen of the State of Louisiana, to comply with the demand of A. W. Norcross, F. W. Perkins, and R. F. Hersey, citizens of the State of Louisiana, contained in the libel, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the district court of the United States of America for the eastern district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of February, 1866.

Witness the Honorable Edward H. Durell, judge of the said court,

at the city of New Orleans, this 23d day of January, A. D. one thousand eight hundred and sixty-six.

(Signed) K. LOEW,
D'y Clerk.

Marshal's return.

Received this 23 day of January, 1866, and on the same day of January, 1866, served copies of the within citation, plaintiff's petition, and documents, annexed, on the within-named Louis Frigerio, jr., in
12 the manner following, to wit, personally at the office of the U. S. marshal, in this city.

N. Orl's, Jan'y 24, '66.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Claim.—Filed Jan'y 23, 1866.

A. W. NORCROSS, F. W. PERKINS, & R. F. Hersey,
vs.
STEAMBOAT LAURA. } No. 8357.

And now comes Louis Frigerio, through his agent, Louis Frigerio, jr., and claims, as his own, said st'b't Laura, her tackle, apparel, engines, &c., and says that no other person or persons has or have any right, title, interest, or ownership in or to said steamboat Laura, which fact he is willing to affirm by oath, or such other proof as the nature of the case or the court may require.

(Signed) LOUIS FRIGERIO, JR.,
Agent.

Sworn to and subscribed before me this 23d January, 1866.

(Signed) K. LOEW,
D'y Clerk.

Release bond.—Filed January 23, 1866.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

13 Know all men by these presents that we, Louis Frigerio, jr., agent of Louis Frigerio, claimant and owner of the st'b't Laura, as principal, and D. Piaggio, as surety, are held and firmly bound unto A. W. Norcross & all libellants, in the sum of twenty-five thousand five hundred dollars, lawful money of the United States of America, for the payment whereof to the said A. W. Norcross, & all their heirs, executors, and administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals hereunto affixed by us at New Orleans, this 23d day of January one thousand eight hundred and sixty-six.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the eastern district of Louisiana, at the suit of A. W. Norcross & al. vs. St'b't Laura, her tackle, apparel, and furniture, and numbered 8357 on the docket of the said court, commanding the marshal to seize and take into his pos-

session the said boat, which has been seized accordingly, but has been released from said seizure and delivered to L. Frigerio, jr., the
14 agent of the owner thereof, by reason of the signing, sealing, and delivery of these presents; said Frigerio jr., agent, having filed a claim thereto, which is now of record in the clerk's office of this court:

Now the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

(Sig.) LOUIS FRIGERIO, JR., *Ag't.* [L. S.]
D. PIAGGIO. [L. S.]

Signed, sealed, & delivered in the presence of—
(Sig.) K. LOEW, *D'y Clk.*

[25 cts. stamp.]

D. Piaggio, being sworn, says he resides in this city, and is worth $25,500 over and above all his debts and liabilities.

(Sig.) D. PIAGGIO.

Sworn to & subscribed before me this 23 Jan'y, 1866.
(Signed) K. LOEW, *D'y Clk.*

Writ of release.

United States district court, east. dist. of Louisiana.

A. W. NORCROSS, F. W. PERKINS, & R. F. Hersey,
vs.
15 ST'B'T LAURA. } No. 8357.

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas L. Frigerio, jr., agent of Louis Frigerio, owner of said steamboat, hath this day filed a claim thereto on behalf of said owner, and which said claim is now of record in this office,

You are hereby authorized to release the said st'b't Laura from seizure, and her to restore to the possession and custody of said claimant, he having given bond conditioned as required by law, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. E. H. Durell, judge of said court at New Orleans, this 23 day of Jan'y, 1866, & the 90th year of the independence of the United States.

[SEAL.] (Sig.) K. LOEW, *D'y Clk.*

Marshal's return.

Rec'd Jan'y 23, 1866, & on the same day, month, and year released the steamboat Laura, her tackle, &c., to L's Frigerio, jr., the
16 agent of the owner of said steamboat, by giving him an order to

the U. S. marshal's keeper to release said boat; and from Capt. Bolinger, said keeper, took a receipt for said steamboat, &c., which receipt is on file in the U. S. marshal's office.

New Orleans, Jan'y 23d 1866.

(Sig.) J. J. PREIS,
D'y U. S. Marshal.

Answer.—Filed Feb'y 8th, 1866.

A. W. NORCROSS, F. W. PERKINS, & R. F. Hersey,
vs.
STEAMBOAT LAURA & AL. } 8357.

To the Hon. E. H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

And now Louis Frigerio of the city of New Orleans, in the district aforesaid, intervening for his interest in the steamboat Laura, her tackle, apparel, &c., as well as personally, appears before this hon. court, and for answer to the libel of complaint of A. W. Norcross, F. W. Perkins, and R. F. Hersey, all of said city of New Orleans, merchants and copartners, doing business under the name and style of Norcross, Perkins, & Hersey, against the said steamboat Laura, her tackle, apparel,
17 and furniture, and against all persons lawfully intervening for their interest therein, and personally against Louis Frigerio, jr., (meaning your respondent, owner and manager thereof,) alleges and articulately propounds as follows:

1st. That at the time of said alle*d*ged , tort, collision, &c., to wit, on the 19th Jan'y, 1866, as well as before said date, your respondent being the owner of said st'b't Laura, her tackle, apparel, &c., used and employed her in transporting freight and passengers between the port of Lakeport in the parish of Orleans and the ports of Mandeville, Madisonville, and Covington, in the parish of St. Tammany, all in the State of Louisiana, between which ports said Laura was daily plying for the purposes aforesaid.

2d. That on said Saturday, the 19th day of January, 1866, said Laura being on her regular daily trip from said ports of Mandeville, Madisonville, &c., to said port of Lakeport, and at about the hour of half past 10 o'clock a. m., when nearing the Pontchartrain railroad wharf, the regular landing place of said steamboat, the weather being very rough and the win' very high, the steamboat W. B. Savory, was spy*e*d to the westward, about three miles from the said Pontchartrain railroad wharf, in distress, her colors flying and Union down; that in
18 charity, and at great risk and peril, the said Laura was turned from her course and landing to the relief & assistance of said W. B. Savory; that when within hailing distance of said W. B. Savory, her commander called out to said Laura, "for God's sake, to save his passengers and crew and let the boat go down;" that thereupon said Laura approached in close proximity to said disabled steamboat, W. B. Savory, and succeeded, at great risk and after great efforts, in rescu*e*ing the twenty-seven passengers and officers and crew of said disabled and distressed steamboat, the clerk and captain being the first to avail themselves of this timely rescue in jumping on board said Laura; that said passengers, officers, and crew were immediately transported and taken by said Laura to her landing as aforesaid, where they were safely put ashore.

3d. That said Laura immediately thereafter proceeded to discharge her cargo to take on board other freight & passengers, and, about 1½ hours after, proceeded on her return trip to Mandeville, Madisonville, &c., as usual; that said steamboat W. B. Savory being abandoned, in a sinking condition, with the sea breaking over her deck & washing into her, with one of her wheels disabled and her chimneys tottering
19 very much with every sweep of the sea, said Laura appro'ched said wreck for the purpose of saving part of the cargo of said W. B. Savory, & of rescueing said steamboat itself, if possible, from total loss; but the sea being very rough and the wind very high, said Laura was unable to approach near enough to said wreck for said purpose, & could only attach her to a heavy hawser swung from the Laura and put three men on board; that having thus secured said wreck to said hawser, said Laura took her in tow with the intent of towing her to a safe harbor in the Tchefuncte River; that after towing her with every decree of caution and care towards said point for about two hours, she was suddenly capsized by the sea water in her *wind* and sunk, said three men on board of her barely escaping death by drowning; that though every effort was then made to save part of her cargo, the weather was tempestuous as to baffle every effort; that in trying to save said steamboat or her cargo, said efforts were prompt*l*ed by charity and moral duty, and the charge and statements of said libel, under existing circumstances, shows a want of gratitude and an inappreciation of justice, without parallel.

20 4. That this respondent further denies all and singular the several matters & things in said libel*l* of complaint set forth, so far as the same are inconsistent with the facts and averments of this answer as not herein expressly admitted, & he specially denies that said W. B. Savory was seaworthy, fully and properly equipped & manned, or had a right to carry passengers.

Wherefore, your respondent prays that this hon. court would be pleased to pronounce judgment against the libel aforesaid, and in favor of your respondent in personam, as well as owner and claimant of said steamboat Laura, and to condemn the libellants in costs; & otherwise right and justice to administer in the premises.

(Sig.) LOUIS J. FRIGERIO.

Sworn to & subscribed before me this 8th Feb'y, 1866.

K. LOEW,
D'y Cl'k.

(Sig.) C. ROSELIUS,
Proctor.

Order to take testimony.—March 9th, 1866.

NORCROSS & AL.
vs.
ST'R LAURA.

21 On motion of Sullivan, Billings and Hughes, proctors for libell'ts and pl'ffs, and on suggesting to the court that the abovenamed cause is at issue on the pleadings herein and that numerous witnesses are now within this district whose testimony is material to establish the case of the libellants & plaintiffs:

It is ordered that the proctor for claimant and defendant be notified to appear before Charles Claiborne, esq., U. S. comm'r, on Saturday,

March 10th, 1866, at 5½ p. m., at the office of the clerk of this court, for the purpose of taking the testimony of said witnesses, to be used upon the trial herein, and that all witnesses, whether for libellants or claimant, be hereafter examined before said comm'r.—(Extract from the minutes.)

Notice.

NORCROSS & AL. *vs.* ST'R LAURA. } No. 8357.

To C. ROSELIUS, Esq.:

You are hereby notified that testimony will be taken in the above-entitled case on Saturday, 10th day of March, 1866, at the clerk's office of this court, at 5½ p. m., on behalf of libellant.

22 New Orleans, March 9th, '66.

K. LOEW, *D'y Clk.*

Service.

Rec'd March 9, 1866, and on the same day, month, and year served a copy of the within notice on C. Roselius, esq., the att'y named herein, personally, at his office, on Custom-house street, in this city.

New Orleans, M'ch 10, 1866.

J. P. PREIS,
D'y U. S. Marsh'l.

Testimony for libellants.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

Testimony taken March 10th, 1866, before U. S. comm'r C. Claiborne. Present, Sullivan, Billings & Hughes, & C. Roselius.

THOMAS E. CRANMER, sworn for libellants, says:

I reside in Jefferson City; am 37 years of age. On 19 January, 1866, I was captain of W. B. Savory; had commanded her in the neighborhood of a month. The Savory plyed between New Orleans & Covington and intermediate landings; she was manned properly; she had a pilot, a clerk, 1 engineer, 6 deck hands, 1 fireman, cook & cham-

23 bermaid, watchman, & a captain; she was thus manned during the time I commanded her; she had everything required by law; steam and hand pumps, 2 anchors—a small & a large one—about 75 fathoms of chain, numerous lines, 1 light boat of some 12 persons capacity. The Savory started from Covington on the 17th January last, about 4 p. m. We laid by the mouth of the Tchefuncta River till next morning, 18th, till 8 o'clock a. m. Arrived on Fitz's place, on Tangipaho River, about 12 o'clock. Got under weigh from Fitz's place at about 2 o'clock, with a tow of timber, which is 10 cribs; there are from 10 to 14 logs of timber in a crib; and proceeded directly for New Orleans at 2 o'clock; made from 2½ to 3 miles per hour. The distance from Tangipaho to the landing on this side of the lake is about 36 miles. The weather was beautiful all the voyage across the lake until we arrived on this side of the

lake when we found the weather very foggy and dark. We came to anchor at about ½ mile from the pickets on this side of Lake Pontchartrain or 1½ miles from the shore. About 3 o'clock the
24 wind changed, and turned to the north, and after that it blew a gale—a very strong gale. The condition of the Savory was very good at that time; she was not leaking any; I tried the pumps myself. When daylight broke I anchored the tow & made her loose from the boat. The wind was about blowing as hard at 10 o'clock of the 19th Jan'y as it blew at daylight. The boat was not leaking at 10 o'clock. I signalled the Laura about 10 o'clock, when I saw her smoke. I signalled her with the steam whistle. I told my watchman to blow the whistle. There was no other signal given. I signalled her to come and take my passengers to the shore. It was not my intention to leave the Savory until the Laura came alongside, because I was not in trouble then. The Laura came up alongside and when she reached my port side, she stove in my port wheel, and then I made up my mind that I would leave the Savory for the tug-boat to tow her in. I made arrangements with the pilot, the engineer & 2 deck hands to stay
25 on board; this was prior to the arrival of the Laura; they were to stay on the Savory whilst I would go on the Laura. After the Laura had smashed our port wheel, she drew off a little ways and came up to the Savory again. I went on board of the Laura after she had come up and bounded a third time against the Savory. I went on shore upon her. I saw none of the men on board the Laura whom I had selected to remain on my boat. Had a conversation on the Laura with her captain. Asked him to make out a bill for bringing up the passengers. He replied, "Nothing at present." I told the captain I was going ashore to get a tug to bring my boat in. The clerk of the Savory was behind me when I told this to the captain of the Laura. In about ½ an hour after the Laura had landed me, she returned to the Savory; she took her in tow and started to sea with her. I saw this, to my astonishment. When I left the Savory at anchor I went on the Laura. She was in just as good condition as she was 3 days before, except her port wheel. There was nothing the matter with her
26 that would have prevented her from riding out the gale.

Cross-examined:

The tonnage of the Savory is about 40 tons; high pressure; engine single. Can't tell how old she is; judges her to be 3 or 4 years old. The boat had six or seven passengers. She had a permit from the custom-house to carry passengers; am sure of it; got the permit myself. The persons I had on board were not what are called passengers; they were raftsmen, and I charged them no passage. I had no signal of distress out, that I know of. If the Union was down I am not aware of it. I had given no orders to make signals of distress. When the Laura came within hailing distance her captain asked me, "What do you want." I replied, "I want you to take my passengers ashore. 5 men were left behind by me on the Savory when I left her. Don't know what became of them.

Being asked, did the men you left in charge of the Savory,
27 abandon her? says "Not to my knowledge."

Have you any knowledge that these men remained on board? Says, "Yes, they remained there, because I saw them from the Laura, on the Savory."

Being asked if he knows that these men remained there after that time? says, "No. I have no knowledge on the subject."

Nobody but my clerk was present when I had the conversation with the captain of the Laura, alluded to. There are no tug-boats on the lake, but in the canal there are one or two—the Alexandria and the Governor Mouton. They are low-pressure boats. I don't think it was over ½ hour after I had left the Laura that she returned to the Savory and took her in tow. There was a good stiff breeze blowing at the time—what we call a rough sea. The two boats were heading to the northward, for Mandeville, when they started. They were about 50 yards distant. The Laura to *wing* the Savory.

28 Re-ex'd:

The wind blew near northwest at the time I speak of, a rough sea.

Re-cross ex'd:

I cannot say positively from what direction the wind blew, but I know it had not changed.

(Sig.) TH'S E. CRANMER.

Sworn to and subscribed before me this 10th March, 1866.

(Sig.) CH'S CLAIBORNE,
U. S. Comm'r.

Testimony for libellants.

MARCH 13, 1866.

NORCROSS & AL. *vs.* ST'R LAURA. } No. 8357.

Testimony before C. Claiborne, U. S. comm'r, March 13, 1866. Present, S., B. & Hughes and C. Roselius.

GEORGE C. NORCROSS, sworn for libellants, says:

I reside in New Orleans; am 28 years of age; was clerk on the Savory from Dec'r '65, to the time of collision. The boat *ran* between Madisonville, Covington, and the New Basin. She had a cap-
29 tain, a watchman, pilot, engineer, 6 deck hands, cook, chambermaid, and clerk; 15 or 20 life preservers, 2 pumps, 2 anchors—1 small and 1 large—& chain; also a new 6-inch bilge-pump, one lifeboat, & plenty of hawsers. I was on board at the time of disaster. It was on a Saturday morning, the 20 January, 1866. I think on Thursday afternoon, between the hours of 3 or 4 o'clock, we left Covington for Madisonville & proceeded on our trip. We laid at Madisonville till the next morning about 8, when we left for Tangipaho River. Arrived at Fitz's place at 12 o'clock, same day that we left Madisonville. We then took in tow a raft of 10 cribs of timber. Crossed the Tangipaho bar about 3 o'clock, bound*ed* for New Orleans; after crossing that bar we made between 2 & 3 miles an hour. About 3 o'clock of Saturday morning we reached this side of Lake Pontchartrain & anchored. I put the anchor over myself, or helped do*ing* so. We anchored there on account of its being dark & a little foggy, and the wind blowing into the mouth of the picket*t*s off the Bayou St. John, in such a way that he could not go in. About an hour before we anchored, the captain called me. The wind was then blowing on to the land. The boat was not leaking any when we anchored. I tried the

30 pumps myself. Just after daylight we anchored the tow, & made her loose from the boat. We were then ½ or ¾ths of a mile from the pickets; I would say perhaps a mile. After daylight the Laura was signalled; this at about 10 o'clock, & a pretty stiff gale blowing then. The captain of the Savory signalled the Laura by my blowing a steam whistle. Another signal was made by the passengers and myself. We hoisted a little flag that we had—the Union down. This was done because the way the wind blew I was afraid the Laura would not hear the whistle. There was no order given to me by the capt. to hoist the flag. We had 6 or 7 men on board that did not belong to the crew. They were timber men and not passengers. These men expressed uneasiness on account of the ship. They were afraid of the gale. The Laura answered our signal by coming to us. When the Laura came up the first time, her capt. asked our capt., "What do you want?" He replied, "I want you to take my passengers on shore." The other said, "All right," or somet'ing like it. The Laura came on us at the port side, & sliced our port bridge-tree, disabling our port wheel.

31 I went on the Laura the first moment. Had been standing on the port wheel-house when she struck the Savory. Afterwards I saw the capt., the raftsmen, the cook, and stewardess, the watchman, the nigger, & and his wife on the Laura. I went ashore from the Laura. I went with the capt. of the Savory to the capt. of the Laura, where our capt. asked the capt. of the Laura what his bill was to bring the passengers ashore, & my understanding is that the capt. of the Laura said, "No charge," or words to that effect. I heard the capt. of the Savory also to state to the capt. of the Laura, that we wanted to go ashore and get a tug to bring the Savory in. The Savory lost all her books, except her cash-book, mem. of freight, and time-book for the men. It was my business to receive freight. We had on board 3 cribs of lumber sawed into planks; 1 bale of cotton; about 30 bbls. of tar—small ½ blls.—& 2 coops of chickens as freight; also a small case of m'd'ze. The value of the lumber on board, was about $150, ex-

32 cept the boards, some 300 feet. The compensation for towing the cribs of timber was $20 a crib. The freight on the lumber, $6 a 1,000 feet. Cotton $2 a bale. Tar, 25 cts. per bll. Chicken coops, $5.

Cross ex.:

At present I am out-door clerk for libellants. Am a brother of Mr. Norcross, one of the pl'ffs. Have no interest in the Savory; nothing but my salary. Have no pecuniary interest in the event of this suit. Sometimes I acted as mate of the Savory. We had no regular mate. Acted as mate in stowing cargo, & loading and unloading the freight. I acted under the captain instructions, when he was not on board. Always did so. The flag was hoisted, the Union down, not as a signal of distress, but to attract the attention of the Laura; besides we made signals with one sheet, which was placed in front of the smoke stack, on the boiler deck. I gave two sheets, but one only was put up, and that was by myself. I heard no other words pass between the capt. of the Laura & that of the Savory, when the former boat approached us, than what I have already stated, & I was standing near by.

33 Being asked whether the capt. of the Savory did not tell the capt. of the Laura, when that vessel struck your port wheel, "For God's sake, let the vessel be and save my passengers & crew," or words to that effect, says "I did not hear him say so."

The life-boat was in good condition & capable of containing 10 or 12

men. The wind had no effect upon the chimneys of the Savory; they were not swaying backwards & forwards—not more than the usual sway, occasioned by the movements of the boat. My impression is that I told the captain I wanted to go ashore by the Laura. Received no instructions from him to remain on the Savory. Heard the captain tell one man to remain on board; heard 3 other men tell that the capt. had told them to remain on board. In the course of six hours after I had arrived in the city of New Orleans, I saw these men in town, & cannot swear whether anybody remained on board or not. I don't know that a license to carry passengers was refused to the Savory. The morning I anchored the boat I cut my knee with the foot of the engine; I
34 was suffering much, and had to go to the first place I could, to bathe my wound. It was so bad that I was confined to my room for 10 days. The capt. of the Savory was standing close to the capt. of the Laura when he told him he would go and get a tug. The conversation between the captains about the charge for bringing the passengers ashore, and the statement that Cranmer would go ashore and get a tug did not take more than a minute's time. As soon as the Laura struck the Savory, I availed myself of the chance to get on the Laura. On the part of the passengers there was a general scramble to get on the Laura, but not on the part of the crew.

Re-direct:

The capt. of the Savory was standing at the after port deck when the port wheel was stove in by the Laura—some 10 or 15 feet from it. Next to the captain the pilot would be relied on for the navigation of the boat. I gave the pilot the key to the store-room before the Laura had come up. I don't know a thing about steamboating. My
35 duties were exclusively confined to the duties of the clerk—collect the bills & pay the men; had nothing at all to do with the navigation of the steamer.

(Sig.) GEO. C. NORCROSS.

Sworn to & subscribed before me this 13 M'ch, 1866.

C. CLAIBORNE,
U. S. Com'r.

Testimony for claimant.

M'CH 13, '66.

TH'S W. CRAWFORD, sworn for claimant, says:

I was a passenger on the Laura on 19th or 20th Jan'y last. She left Madisonville at 6 a. m. for N. O. She left Madisonville for Mandeville, & thence for N. O. for the Pontchartrain railroad landing. The weather was very rough when we started, & continued so during the trip. We got within 2 miles from the railroad wharf between 10 & 11 a. m., & we turned off towards the Bayou St. John with the intention to go the Savory. Some people on board the Laura had told me that they had heard a whistle from the Savory, and that she was in distress.
36 The Savory had the flag, *of* the union down, which was said to mean a flag of distress, and besides she had two sheets flying. I observed her chimney, which seemed to be loose, and many t'ought it would fall. I was in the cabin below, and some one cried from the Laura, when we approached the Savory, "What do you want, or, do you want to come 'board;" the answer from the Savory was, " We all want

to come on board." This is what I understood them to say, the wind making a great noise at the time, and I being below. When the Laura approached nearer, she struck the Savory about the wheel-house. She was going very slow at the time; had stopped her headway, and have no doubt that the collision was caused by the action of the wind and waves, as well as I can judge. The effect of this collision was a rebound. I don't recollect that it was replied by the Savory "Never mind the vessel; save my passengers & crew." After the Laura was brought a 2d time alongside the Savory, there was a general scramble & confusion on the Savory; every one tried to leave her as quick as possible
37 & get on the Laura. It seemed to me that there was no one in command, & every one tried to get on the Laura. There was every appearance that the Savory had been abandoned. I did not see any one remain on the Savory. There were some 10, 12, or 15 persons, altogether, on the Savory, I judge, which came on the Laura. Can't say exactly. The people from the Savory were landed at the railroad by the Laura.

What was the conversation between you and Mr. Lanier and Robertson, passengers on the Savory?

(Objected to by pl'ff's att'ys:)

Says: We spoke about the trip, and that they were glad to get off the Savory, as they thought she was unsafe.

Cross-ex.:

I reside in N. O.; am not interested in the Laura. No relation to the owner. The distance from Mandeville to the Pontchartrain R. R. wharf is about 20 miles. Been frequently across the lake, but only one trip on the Laura. She is a fast boat; made her trip from N. O. to Mandeville in less than 2 hours. The Laura had no difficulty in making
38 her landing when she came to the wharf. I know of no signal of distress, except the flags flying, and did not hear her whistle. I was told that when the Union is down it is signal of distress. Don't know it otherwise. The chimney of the Savory was swaying more than the usual motion of the waves would cause. When I say that the Savory appeared to be abandoned, I mean that there was no one left on board.

Suppose you knew that those who were saving her were leaving her to get a tug to bring her in, would you then say she appeared to be abandoned? Says: Of course not, if they were leaving her with the intention of getting a tug [but I think from the appearance of things that they had no such intention.]

(Counsel for pl'ffs objected to so much of witness' answer as is included between brackets as not being responsive to his question.)

The Savory was heading to the wind, and the Laura approached from the leeward.

Question. Which way, with reference to the direction of the
39 wind, did the Laura approach the Savory at the time of collision?

Says: She came to the leeward of the Savory. She came up towards the wind, of course. She went up against the wind. The two vessels seemed to be in near proximity, not over 15 or 20 minutes, I think.

(Sig.) TH'S W. CRAWFORD.

Sworn to & subscribed before me this 13th March, 1866.

CH'S CLAIBORNE,
U. S. Com'r.

Testimony for Norcross & als., libellants.

M'CH 14, '66.

NORCROSS & AL. *vs.* ST'R LAURA. } No. 8357.

Testimony on behalf of libellants, taken by consent, before U. S. comm'r, March 14th, 1866.

ANTONIO MARCO, sworn for pl'ffs, says:

I am about 52; was pilot on the Savory at the time of this disaster; had been pilot on her for 1 month & 21 days. Have been navigating on the lake since 1832. Sometimes I made weekly trips; some-
40 times 2 trips in one month. Was generally on schooners. On the Savory I made 2 trips a week. We left Tangepaho River on Friday at 3 o'clock p. m. We made from 2½ to 3 miles an hour; sometimes nothing at all; this depends on wind & weather. The fore part of the night from Friday to Saturday was good prior to 9 o'clock, when it began to become foggy, rainy, and dark, & then increased up to 12 o'clock. After 12 o'clock it commenced to blow from the land—south wind—and it blew very hard. We cast anchor at 3 o'clock in the morning of Saturday. We could see the shore very well when we cast anchor, being about 2 miles from land. We lowered the anchor at that place, because we could not go ahead, on account of the south wind, that blew hard. The Savory was not leaking at all at that time. I made them try the pumps & therefore knew we were not leaking. After we had anchored, I laid down in my berth. Came on deck when the wind had changed, at about 5 a. m.; the wind then began to blow from southwest. The
41 tow had not yet been loose from the boat. The tow was anchored at about ½ past 5 a. m. After daylight the wind changed again, and began to blow harder; it then blew from the northwest. At about 10 o'clock we signalled the Laura. The whistle was blown; saw the flag raised behind also. The Laura came up to us. Did not hear any conversations between the two captains, as I was below, attending to my business. The Laura *right* broke the wheel of the Savory, when she came up. I saw it, being close to the wheel. In my opinion, if the Laura had been properly managed, she could have prevented the breaking of our wheel. The Laura came up behind, from the way the wind was blowing. She came in the wind. In my opinion, she *would* have gone ahead of the Savory, & sent a small boat to take the line on the Savory, and allowed herself to be pulled up. She could have gone ahead the Savory, and thrown a line on board. Before the Laura came up, I had been selected by the capt. to stay on the Savory. The clerk also spoke to me, and gave me the key for the provisions in the
42 pantry. The capt. stated he would go and bring a tow & 5 or 6 good men to assist the Savory, instead of the negroes. Myself, the engineer, and the fireman, were to stay; 3 in all. After the Laura had struck our wheel, she threw back a little & returned again, made fast by a line. I know nothing of the men jumping on the Laura after we had been struck. I did not see Capt. Cranmer go on board the Laura. I went on her myself. After the Laura had struck the Savory, I could see no one left on that vessel. Afterwards I saw all the men from the Savory on the wharf. Don't know where they came from. The Laura was alongside the Savory about ½ hour. Did not see Capt. Cranmer on the Laura. The Laura took me to the shore, & remained

at the wharf about ½ hour. When she left the wharf she went right to the Savory; saw her close to her. When I took the cars to come to town, I saw the Laura close to the Savory. The wind was then
43 blowing north-northwest, and hard. The Savory was a fit boat, but with a wind like that which was blowing, you could have done nothing with her. She did not leake during the time I was on her. She had good anchors & chains, & good pumps; 2 steam pumps & 2 hand pumps, properly manned. The Savory would have ridden out the gale had she been left alone, I think. She would have been safe, but she might have lost her cabin. No accident ever happened to the Savory whilst I was on board of her before. On two trips we had experienced very rough weather.

Cross-ex.:

We had 5 black men. They were no seamen, but laborers; they used to take in cargo and discharge it. They worked for their passage. I never saw them on board the Savory before. These niggers were much scared. They are men accustomed to work on plantations and in the pine woods. The wind was blowing right from the shore when the Savory anchored. When the Laura came up the wind blew north-
44 northwest from the sea, and in the opposite direction it blew before. When the Laura came from the Madisonville side, she came into the starboard side of the Savory. She came down on the shore side of the Savory, went around her stern, and came up on the larboard side. When I got on the Laura, I stayed right on the bow. Saw a couple of men there belonging to the Laura. I did not speak to anyone on board. I was mad, on account of the Laura's striking our vessel. Saw but one man, that one who was to stay on board with me, go on the Laura. I came right up to town, and saw the captain of the Savory, in the office; had not seen him before since the affair. I came to town by the 11 or 12 o'clock car; don't remember.

Being asked how many trips he made on the Savory, says: I don't know, as I have not counted them. I count the money when I get it. My salary is $65 a month. The boat owes me nothing whatever. Have received my full pay upon arriving in the city. At present
45 I work on board a schooner; do what kind of work I can get; wash the plates; any kind of work. Know nothing about life preservers on board the Savory. Am a fisherman; can swim like a fish. The Savory was a high-pressure boat. She was flat in the water. A sea-boat is sharp built; a flat bottom would not do for a sea-boat. We had a life-boat built of iron; a very good one.

Re-direct:

The 5 men on the Savory worked for their passage. They were no seamen, but working, laboring men. Besides these 5 black men, there was a capt., a clerk, an engineer, a watchman, fireman, cook, & chambermaid. I saw some money given to the 5 black men, but know nothing about it. One named Washington had been on the Savory before. He was a fireman, I think. These 5 negroes were proper men to load and unload the cargo, and do the work on board; that is to say, the common work of deck-hands. It is customary to employ men on the lake like these 5 negroes.

his
ANTONIO + MARCO.
mark.

46 Sworn to and subscribed before me this 14th March, 1866.

CH'S CLAIBORNE,
U. S. Com'r.

Testimony for claimant.

M'CH 16, 1866.

NORCROSS ET AL.
vs.
ST'R LAURA. } No. 8357.

Testimony taken March 16, 1866, before U. S. com'r. Present, Sullivan, Billings, & Hughes and C. Roselius.

LEONARD BOLLINGER, sworn for claimant, says:

I am a sea-fearing man; am now captain of the Laura, and have been for some 3 months. On the 19th and 20 Jan'y last, I was capt. of the Laura. On Saturday morning, 20 Jan'y, we started from Mandeville at about 9 o'clock, for New Orleans. She came direct from Mandeville for the Pontchartrain R. R., at about ½ past 10. I saw a vessel laying to the west of us, some 4 miles distant. It then blew very hard from the northward. I *found* it very strange that the vessel was laying there; took my spy-glass, and found that she was in distress, by seeing three flags on her. I then told my pilot to steer to watch that vessel. I run under her stern, & hailed her capt.; asked him what I could do for
47 him. He asked me to come alongside; hallowed out to me to come on his port side. When I came to his port side, I struck his port wheel, and knocked some of his planks down. Turned round to my pilot, and told him not to come on so fast; and the capt. of the Savory made the remark: "Never mind if you sink her, as long as you get us all off from her." After they came all aboard the Laura, I asked the capt. of the Savory to sing out to one of his men to let the line go, so I could back out from the Savory, but there was not one man on board to do it, and I had to send one of my own men to do it. When I backed away from the Savory, going towards the r'road, the capt. and his clerk came up on the boiler deck of the Laura, and told me: "There is $5,000 gone to the devil." He asked me then if I could tow the Savory in the old basin. I told him I could not; that the sea was *to* heavy; that I run the risk of losing the Laura and the Savory. When I landed at the R. R., some of the passengers made the remark that they were mighty glad to be off the Savory. The capt., his clerk, &
48 crew, I believe, went right to town; am not sure of it. After the one o'clock train came down. I went to Mr. Frigerio, the owner of the boat, who was on board, told him that it was my duty to go over there and save that steamer, & asked him if he would let me go over. He replied he knew nothing about it; that I was the capt. of the boat, and had to exercise my own discretion. I then started from the railroad & went for the Savory. This was about 10 o'clock. I had my lines all ready to go over, so as to make a fast trip, and not to lay alongside of her too long. Put three men on the Savory, to keep her clear of water, if they could. Laid alongside of her about 10 minutes, when I started ahead, towing her for Tchefuncta River. When I was on the way with the Savory I walked astern of the Laura, and asked the men on the Savory whether they had any water in the hold. I towed her about 10 or 12 miles, with her chimney hanging pretty well on her starboard side, which was loose and shaking from one side to the other. I found the boat was coming more to the starboard all the time, and then sung out to the men

49 to *have* some of the wood & lumber overboard, off the starboard side. This was done, but did not help her much, the water went in her so strong that finally she capsized bottom up. One of the men was in the pilot-house when she capsized, the other two finally came up amongst the broken.up cabin. I then went and picked up the 3 men, and went on my trip to Mandeville. I first observe' these 3 flags when I was about 3 miles from the railroad, looking through my glass; saw the American flag with the union down. The union down signifies distress. The other two flags, one of them was forward, on the bow, on a small pole, the other on the boiler deck; they were white flags, and signified also that they were in distress. I am certain of the answer of the capt. of the Savory, "Don't mind about sinking her, provided the passengers & crew are saved." I am satisfied there was not a soul left on the Savory. I don't believe I had any other conversation with the capt. & the clerk when they were on the Laura, except that
50 the capt. asked me to make out my bill—charges for taking his crew and passengers off, and I answered there were no charges, as I had only done my duty. I remember, also, that the capt. of the Savory told me he was going to try to get a tug to bring the Savory out, & that I told him he could not get one in the whole basin that would come out and bring his boat in, as the weather was too rough. This conversation took place at about 12 o'clock—between 11 & 12. After we had landed, the capt. told me he was going up town; don't know that he went or not. The wind was blowing from the Mandeville side, north shore, when I approached the Savory. The Savory was lying with her bow in that direction; came on her starboard side the 2d time. The first time I had come on her port side. When I first went to the rescue of the Savory, there was much confusion on board. They got aboard the Laura the best way they could. I believe the clerk was the first man that came on board, the capt. the 3d or 4th man on board. I took between 24 *or* 26 men on board the Laura. When I first approached the Savory I run under her stern about 300 yards, and hailed
51 the capt. Our steam had been stopped when I struck her wheel-house. The blow I gave her was not a severe one. I don't think it injured the wheel much; it might have started a-leaking some. The collision was the result of the waves & wind, and not the impetus of the steam. One o'clock is the usual hour for my starting on Saturdays. I had taken in my freight and the passengers before starting. The Savory was not fit for the lake; was a high-pressure boat, in the first place, too small, and had not been built for the lake; had been built for the river; she was flat-bottomed, her hull about 3 feet deep; had a great deal of upper works high out of the water; unfit for sea navigation; she was not a new boat; judge her to be about 6 years old; suppose so. Her upper timbers were very light. On a high-pressure boat the upper timbers are always light; I mean boats like the Savory. One of the men I put on the Savory belonged to the Laura, the other 2 I hired. One was named Bill, the other John; don't recollect the third.

52 Cross-ex.:

I have been a seafearing man since 1853; almost all time on the lake. We had no difficulty in navigating the Laura on the 19th or 20th Jan'y, '66. The Savory was anchored, lying still, when I first saw her. The captain answered back when I first hailed the Savory. I did not ask him where to land when I approached the Savory. I did not do more than to knock some of the planks down when I struck the

Savory, that I know of. I did not go aboard of her, and will not swear that I did not break the bridge-tree. After I had told my pilot not to come on so fast, he replied the Laura had stopped already; that he had rung the stopping bell. When we struck the Savory the Laura did not have more impetus than she *out* to have from the waves and wind. I did not know that the steam had already been stopped when I told the pilot to stop. I was satisfied that there was no one left on the Savory from going alongside of her the 2d time, except my own crew. I was alongside of the Savory, taking the passengers off, from 15 to 20
53 minutes. It was bet. 11 & 12 o'clock when I reached her. The Savory was about 3 or 4 miles from the entry of the old basin; she was closer to the new than the old basin. She was about 6 or 7 miles from the Pontch. R. R. wharf. I took some 24 or 26 men from the Savory on the Laura, 1 or 2 women. Some 4 or 5 negroes, one a black woman; about 19 white people. The clerk is the 1st man that came on the Laura, 2d person was another man; don't know the 3d, the 4th or 5th was the captain. There was but one place to get on the Laura, that was forward, over her bow. Only knew who was the capt. after we got away. I believe that I can swear that the capt. was not the 8th man that went on board. He was the 4th, 5th, or 6th. Would not swear he was the 7th. It took me about ¾ of an hour to go from the Savory to the wharf. My pilot and the capt. of the Savory's own clerk were within hearing when the capt. said "There are $5,000 gone to the devil." The same persons were present when the conversation took place between the capt. and me about the former going to try and get a tug, & my reply. We laid at the wharf about ¾ of an hour.
54 We always return to the city by the 12 o'clock train on Saturdays. This was the first train that returned from the city after we had landed. Mr. Frigerio had been on board the Laura on her passage from Mandeville. The 2d time I came to the Savory I landed at the starboard side. Went alongside of her, touched her forward, touched the whole length of her. I believe I struck her starboard bulworks a little. Don't know and don't think it caused her to leak. It was more convenient to me to go to her on the starboard side, and more so than when I approached her first. When I first approached him or hailed him, I was under his stern. He then asked me to come alongside, and I came on the port side, under his stern. At that time, the first time, the anchor of the Savory was holding good. I got her free from anchor by causing her chain to be cut. The waves were dashing over her at that time. Took her some 10 or 12 miles into the lake before she capsized. She *failed* on the starboard side when she capsized, and settled by the bow. I have been on the lake most of the time this
55 past year. I have not seen one boat of the Savory's built on the lake. Have seen high-pressure boats on the lake, but of stronger built, & built for the lake trade. She was as strong as boats of her size usually are, but for river navigation. My intention was to save the boat if I could, by towing her into smooth water on the north shore, which was the only place where there *were* smooth water. Would have received no extra compensation for saving her. I know that there is salvage money to be received in some cases. Don't know that the capt. is entitled to receive any. The boat is entitled to receive some. I saw a person over at Madisonville, on Sunday following, enquiring after the Savory; it was about 2 p. m. That person had come on the st'r Alexandria. The captain of the Savory was that person, and I had a conversation with him. He asked me what I *have* done with the boat. Replied she had capsized. He then intemated that a lawsuit would grow out.

49 to *have* some of the wood & lumber overboard, off the starboard side. This was done, but did not help her much, the water went in her so strong that finally she capsized bottom up. One of the men was in the pilot-house when she capsized, the other two finally came up amongst the broken-up cabin. I then went and picked up the 3 men, and went on my trip to Mandeville. I first observe' these 3 flags when I was about 3 miles from the railroad, looking through my glass; saw the American flag with the union down. The union down signifies distress. The other two flags, one of them was forward, on the bow, on a small pole, the other on the boiler deck; they were white flags, and signified also that they were in distress. I am certain of the answer of the capt. of the Savory, "Don't mind about sinking her, provided the passengers & crew are saved." I am satisfied there was not a soul left on the Savory. I don't believe I had any other conversation with the capt. & the clerk when they were on the Laura, except that
50 the capt. asked me to make out my bill—charges for taking his crew and passengers off, and I answered there were no charges, as I had only done my duty. I remember, also, that the capt. of the Savory told me he was going to try to get a tug to bring the Savory out, & that I told him he could not get one in the whole basin that would come out and bring his boat in, as the weather was too rough. This conversation took place at about 12 o'clock—between 11 & 12. After we had landed, the capt. told me he was going up town; don't know that he went or not. The wind was blowing from the Mandeville side, north shore, when I approached the Savory. The Savory was lying with her bow in that direction; came on her starboard side the 2d time. The first time I had come on her port side. When I first went to the rescue of the Savory, there was much confusion on board. They got aboard the Laura the best way they could. I believe the clerk was the first man that came on board, the capt. the 3d or 4th man on board. I took between 24 *or* 26 men on board the Laura. When I first approached the Savory I run under her stern about 300 yards, and hailed
51 the capt. Our steam had been stopped when I struck her wheel-house. The blow I gave her was not a severe one. I don't think it injured the wheel much; it might have started a-leaking some. The collision was the result of the waves & wind, and not the impetus of the steam. One o'clock is the usual hour for my starting on Saturdays. I had taken in my freight and the passengers before starting. The Savory was not fit for the lake; was a high-pressure boat, in the first place, too small, and had not been built for the lake; had been built for the river; she was flat-bottomed, her hull about 3 feet deep; had a great deal of upper works high out of the water; unfit for sea navigation; she was not a new boat; judge her to be about 6 years old; suppose so. Her upper timbers were very light. On a high-pressure boat the upper timbers are always light; I mean boats like the Savory. One of the men I put on the Savory belonged to the Laura, the other 2 I hired. One was named Bill, the other John; don't recollect the third.

52 Cross-ex.:

I have been a seafearing man since 1853; almost all time on the lake. We had no difficulty in navigating the Laura on the 19th or 20th Jan'y, '66. The Savory was anchored, lying still, when I first saw her. The captain answered back when I first hailed the Savory. I did not ask him where to land when I approached the Savory. I did not do more than to knock some of the planks down when I struck the

Savory, that I know of. I did not go aboard of her, and will not swear that I did not break the bridge-tree. After I had told my pilot not to come on so fast, he replied the Laura had stopped already; that he had rung the stopping bell. When we struck the Savory the Laura did not have more impetus than she *out* to have from the waves and wind. I did not know that the steam had already been stopped when I told the pilot to stop. I was satisfied that there was no one left on the Savory from going alongside of her the 2d time, except my own crew. I was
alongside of the Savory, taking the passengers off, from 15 to 20
53 minutes. It was bet. 11 & 12 o'clock when I reached her. The
Savory was about 3 or 4 miles from the entry of the old basin; she was closer to the new than the old basin. She was about 6 or 7 miles from the Pontch. R. R. wharf. I took some 24 or 26 men from the Savory on the Laura, 1 or 2 women. Some 4 or 5 negroes, one a black woman; about 19 white people. The clerk is the 1st man that came on the Laura, 2d person was another man; don't know the 3d, the 4th or 5th was the captain. There was but one place to get on the Laura, that was forward, over her bow. Only knew who was the capt. after we got away. I believe that I can swear that the capt. was not the 8th man that went on board. He was the 4th, 5th, or 6th. Would not swear he was the 7th. It took me about ¾ of an hour to go from the Savory to the wharf. My pilot and the capt. of the Savory's own clerk were within hearing when the capt. said "There are $5,000 gone to the devil." The same persons were present when the conversation took place between the capt. and me about the former going to try and get
a tug, & my reply. We laid at the wharf about ¾ of an hour.
54 We always return to the city by the 12 o'clock train on Saturdays. This was the first train that returned from the city after we had landed. Mr. Frigerio had been on board the Laura on her passage from Mandeville. The 2d time I came to the Savory I landed at the starboard side. Went alongside of her, touched her forward, touched the whole length of her. I believe I struck her starboard bulworks a little. Don't know and don't think it caused her to leak. It was more convenient to me to go to her on the starboard side, and more so than when I approached her first. When I first approached him or hailed him, I was under his stern. He then asked me to come alongside, and I came on the port side, under his stern. At that time, the first time, the anchor of the Savory was holding good. I got her free from anchor by causing her chain to be cut. The waves were dashing over her at that time. Took her some 10 or 12 miles into the lake before she capsized. She *failed* on the starboard side when she capsized, and
settled by the bow. I have been on the lake most of the time this
55 past year. I have not seen one boat of the Savory's built on the
lake. Have seen high-pressure boats on the lake, but of stronger built, & built for the lake trade. She was as strong as boats of her size usually are, but for river navigation. My intention was to save the boat if I could, by towing her into smooth water on the north shore, which was the only place where there *were* smooth water. Would have received no extra compensation for saving her. I know that there is salvage money to be received in some cases. Don't know that the capt. is entitled to receive any. The boat is entitled to receive some. I saw a person over at Madisonville, on Sunday following, enquiring after the Savory; it was about 2 p. m. That person had come on the st'r Alexandria. The captain of the Savory was that person, and I had a conversation with him. He asked me what I *have* done with the boat. Replied she had capsized. He then intemated that a lawsuit would grow out.

Re-ex.:

56 The Laura is a very fine sea-boat; low pressure; fit to go most anywheres. She is a side-wheel boat; very fast; capable of making 11 to 12 knots an hour. Had the Savory remained at anchor where she was, and with the weather that prevailed, she would have gone down in 6 hours, I believe, as the norther blew until next day, & harder that night than in day-time. In towing the Savory into the lake, we did not have more than the usual steam up, & she retarded our progress, & went at the rate of 2½ to 3 miles an hour only.

(Sig.) CAPT. LEONARD BOLINGER.

Sworn to & subscribed before me this 16 M'ch, '66.

C. CLAIBORNE,
U. S. Com'r.

Testimony for claimant.

M'CH 17, '66.

NORCROSS & AL. }
vs. } 8357.
STEAMER LAURA. }

Testimony taken before U. S. com'r March 17th, 1866. Present, Sullivan, B. & H., and C. Roselius.

W. H. SMITH, sworn for claimant, says:

57 I have been a seafearing man for about 13 years. I am engaged on the Laura; have been on her for about 3 months; first observed the Savory about 10 or 11 o'clock on the 20 Jan'y, '66. I was then in the fire room of the Laura, and somebody said the Savory was in distress. The first thing I saw was that the Laura made for the Savory; looked out, but could not see then that she was in distress. When we got about ¼ of a mile from her I saw the American flag, union down, and two other flags flying on her, which were two white colors; one in the forward, the other on the boiler deck; could not tell what these flags indicated. The American flag, union down, means distress. When we got within about 200 yards of her, the captain of the Laura hailed the Savory. He replied, "Come alongside and take my crew and passengers off;" told him to come on the port side of the Savory, which he did. After the Laura got pretty well up to the Savory, the Laura stopped her engine and tried to get alongside, and in doing so she struck the Savory's wheel-house, & the capt. of the Laura told the capt.
58 of the Savory, "I have struck your wheel-house." The capt. of the Savory replied, "Never mind the wheelhouse; take us off as quick as possible." We then dropped back to the stern, and got a line to make the boat *stady*, and took the crew & passengers of the Savory off. The crew and passengers got aboard in every shape. Every one tried his best to get on the Laura. The weather was then of the roughest kind I ever saw on the lake. We then proceeded to the Pontch. R. R., & landed the passengers and crew of the Savory there. After we had landed there, I heard the capt. of the Laura say, "As we have saved the passengers and crew, we better try and save the boat," & we proceeded to do so. It was about 1 o'clock when we left the wharf again for the Savory. This was our regular hour to leave on our trip. We went to the Savory, and the capt. of the Laura asked me to go on board

of her and assist in making a line, which I did. Two more men were with me; 1 white and a colored man. We then started with the
59 Savory, having her in tow; wen' up on the Savory's pilot-house to keep her steady & steer her; stayed there about 15 minutes, when I was relieved by another man; went down to see how much water she had made; found about 6 inches above her skin, which is usually 6 inches above her bottom, making some 12 inches water in the hold. I then looked for a pump; found one, but in a very bad order; went forward and discovered a hatch which was too small to cover the hatchway; it had been covered up with tarpaulins, temporarily tacked down. All the water that was breaking over the board was continually going through the hatchway into the hold; tried that pump which I found in a poor condition; could not work it with any degree of sufficiency. The capt. then hailed me to throw some of the lumber overboard, which I did; threw overboard a lot of pine wood; hallowed to the capt. I had not help enough to throw more lumber overboard, as it was too heavy.
We then stopped the Laura, and tried to put more help on the
60 Savory, but could not succeed, the weather being so rough. After that I went back to the pilot-house of the Savory, and took the wheel, and found that she was listing over to the starboard very fast. Shor' time after she healed over altogether, and turned bottom up and went to pieces. She was a little listed when I first went on her, and she kept gradually going that way all that time until she went over altogether on the starboard side. Her chimney was swinging backwards and forwards, and when still it was hanging to the starboard side, & was caused, I think, by the water in the hold. The water in the hold and the heavy sea caused her to go over, I think. After the boat went over, I saw the white man floating on the ladder, & the black man came up to the right of the boat. They were picked up by the Laura. I examined the damage done to the wheelhouse by the Laura; found that her outside shaft had dropped; this was the port wheel on the
61 larboard side. I don't think that this affected her hull; can't say that it caused her to leak, because I did not see her leak, tho' I looked. Her bulworks were slightly damaged the 2d time the Laura came up; can't say that it injured her hull. The water that was on the Savory must have washed down the fore hatch, &c., through the false sides. The false sides on the starboard leaked; the interlining was not tight. I don't think that the Savory, kept at anchor, could have ridden out the gale. I think she would have filled with water and capsized; think the Laura was towing the Savory out at the rate of 3 miles an hour.

Cross-ex.:

Have been on the lake for 3 or 4 months as fireman on the Laura; have been on the lake altogether some 5 months. The exact words of the capt. of the Savory were, "Come alongside, and save my crew and passengers." We were then right astern of her. I saw the engineer stop the Laura's engine when we were right up to the stern of the Savory. This was before we struck the wheelhouse; did not
62 notice that the shaft of the port wheel was injured when we came to the Savory the first time; judge we took off the Savory between 20 *or* 26 persons; judges so from my own observation. My business on the Laura was in the fire-room; I was at that time the only fireman; part of the time I was in the fire-room, and part on the deck of the Laura; don't remember that any one else but myself was present when the capt. of the Laura said, "We have saved the passengers; now

let us save the boat." The Savory starboard bulworks were injured the 2d time mostly forward, when she again came to the Savory, and was done principally by the forward part of the Laura. I was selected to go on the Savory, being a seafearing man. I suppose this was about ½ past 1 p. m. She was anchored when I got on board. We cut the cable to get her off. I could not get the anchor off in the usual way, not having help enough, and on account of the weather; rec'd orders from the capt. to cut the cable. There was no steam up on the Savory, neither any fires burning, when I got on her. Every time the sea would break over, the water would pour down the hatch. I did not ex-
63 amine the Savory when I first went on her to see how much water she had; made no examination till I found 12 inches in her hold, about 15 minutes after I had been on her. The outside timber of the port wheel must have been broken, or else the shaft would not have dropped. The water & the weight of the chimney must have caused her to list. The water, without the weight of the chimney, was sufficient, I think, to cause her to list. The chimney guys were broken; they were broken when I first went on board.

(Sig.) W. H. SMITH.

Sworn to and subscribed before me this 17 March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

JACOB NELSON, person of color, sworn for claimant, says:

I was steward on the Laura on 20 Jan'y, 1866. The first thing I knew about the affair, we came from Mandeville to the Pontchartrain R. R., was, that I heard some one say "The Savory is in distress," and I saw the Laura make for her. When we came close enough I saw her white flag. The Laura went on the stern of the Savory;
64 heard the capt. of the Laura ask some one on the Savory a question, but don't know what the answer was. The Laura then went closer to the Savory, close enough to see a man on the Savory throw his carpet-bag on the Laura, and then go on board of her himself. After this I saw some 4 or 5 persons more go on board of the Laura, and more and more when we were close to the Savory; saw that the Laura struck the Savory's wheel-house. After this I heard an old gentleman on the Savory cry out, "I shan't remain here," and he came on the Laura also.

(Sig.) JACOB J. NELSON.

Sworn to & subscribed before me this 17 March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Notice to take testimony.

MARCH 20, 1866.

NORCROSS & AL.
vs. } 8357.
ST'R LAURA.

To SULLIVAN, BILLINGS, & HUGHES, Esq'r's:

You are hereby notified that testimony will be taken in the
65 above-entitled cause on Friday, the 23d day of March, 1866, at

the clerk's office of this court, at 5½ p. m., on behalf of claimant.
N. O., March 20, 1866.
(Sig.) K. LOEW, *D'y Cl'k.*

Service.

Received March 20, 1866, & on same day served a copy of the within notice on Sullivan, Billings & Hughes, the att'ys named herein, in the hands of J. P. Sullivan, esq., one of said firm, at the U. S. marshal's office in this city.
New Orleans, M'ch 21, '66.
(Sig.) J. J. PREIS,
D'y U. S. M'l.

Testimony for claimant.

MARCH 21, 1866.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

Testimony for claimant, taken in presence of counsel on both sides, before U. S. com'r.

J. M. TATE, sworn for claimant, says:

I was clerk on the Laura on 20 Jan'y, 1866. When we were near the Pontch. R. R., 6 or 7 miles off, I called the attention of the engineer to a steamer lying off towards the west of us; asked him if she was
66 not at anchor. I went up stairs, at the owners' request, and looked through the glass, and saw on that steamer the flag flying, with her union down, and reported this to the capt. and the engineer, whereupon the Laura shaped her course towards her. Upon nearing, I saw two more white flags *flowing*, one on the bow and the other about 'midship. When we came near the capt. of the Laura called out to the other boat; asked them what they wanted. The reply of the capt. of the Savory was, that he wanted him to take the crew & passengers off. We came up on the port side. Struck her wheel-house. This was a blow given by the waves. The boat had been coming up as slow as possible, the same as on making a landing. *Went* the bow of the Laura struck the Savory's wheel-house, the capt. of the Laura called to his pilot; told him to be careful, so as not to injure the boat, or some words to that effect. The capt. of the Savory replied, "Never mind the boat, so that you saved the men on board." To my best recollection his expression was, "Save our lives, and never mind the boat." It was the cry of a man in distress and great excitement. We then came up with the bow of our boat to the stern of the Savory. In com-
67 ing up, the clerk of the boat threw on *our* board his carpet-bag, and immediately after came on board himself. One or two passengers then came on board. The 4th or probably the 5th man that came on the Laura was the capt. After they had all come aboard, the capt. came to me and asked what his bill was. I answered there was no charge; that it was but an act of humanity. There was no degree of order observed by the passengers in getting on the Laura. The people on the Savory w*as* very much excited, and came on the Laura the best way they could. We had to tell them several times to be calm; that there was no danger. To my knowledge, as far as it goes, there

was no one left on the Savory. The Savory's people were put ashore by the Laura on the Pontch. R. R. I had a conversation with the capt. and clerk of the Savory. The clerk remarked to me that he had left $300 on board the Savory. This is most of the conversation I had with the clerk about the boat. The capt. told me that a little boy had
68 saved his baggage, and *and* that he never would have thought of it all. I think he gave the little boy $10. Mr. Frigerio and I were present when the capt. stated this. Think there was an overcoat among that baggage, and another package rolled in an oilcloth. I had charge of the clerk's baggage. After having landed the passengers, we took in our cargo and left the wharf at the usual hour. In returning, we went direct for the Savory, put 3 men aboard, and took her in tow. Towed her for about 2 hours, 10 or 12 miles, about midway the lake, when I saw the Savory's chimney turning over, touching the water on the starboard side. She turned right bottom up, & we sent to take the 3 men from her which we had put on board. Had occasion to look at the Savory after we had her in tow. She was listing over very much to the starboard side. Her chimney was leaning to the starboard side. The water was washing over her bow. Every wave washed into her lower deck. The weather was very rough; wind and waves very high. The roughest weather I ever *seen* on the lake. I have seen the Savory, being
69 a passenger on her in Sept. or Oct'r, '65. She laid to for over 24 hours before she attempted to cross the lake, on acc't of the weather, & the weather at that time was not near as rough as on the 20th Jan'y, '66. She was built high out the water, as all high-pressure boats are built. The Laura is a low-pressure boat, built low out of the water. When the Savory was at anchor, before we took her in tow, she already listed to the starboard, and the sea was breaking over her bow. There were some 7 passengers on the Savory whom I know personally, and 10 or 12 niggers whom I don't know.

Cross-ex.:

We had steam up when we struck the Savory the first time, but the engines were not working when we struck her. They had been stopped when we got near her, within about 50 feet, more or less. Don't know by whose orders the engines were stopped. I know it was the clerk of the Savory who threw his carpet-bag on the Laura, because, after he got aboard, he told me he was the clerk. By passengers I mean so many persons that were not employed on the Savory. 2 or 3 of them
70 were in the timber business. Cannot say that the negroes were not connected with the Savory. Am pretty certain that the capt. was the 4th or 5th man that came aboard, tho' I would not swear that he was not the 6th. Don't know what caused the Savory to list. My opinion is, it was the chimney leaning so much on one side. When the Laura returned to the Savory from the wharf the 2d time, I was inside the boat, and not outside where I could see anything. Felt no shock when she got up near her to take her in tow. I mean that the waves dashed over her bulwarks and went into the hold where I say that the waves washed into her. I went on the Laura as clerk in Dec'r, '65. Within the past year (1865) I crossed the lake 4 times, and from Dec'r, '65, to the present time, once every day. I never was employed as an officer of a boat before I came on the Laura.

(Sig.) J. M. TATE.

Sworn to & subscribed before me this 21 March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Testimony for libellants.

71 CH'S E. DAYTON, sworn for libellants, says:

On 20 Jan'y, '66, I was on the st'r Alice Virian, on the lake end. Saw the Savory laying ahead of the pickets at the mouth of the new canal. She had wood for our boat. When she got within ¾ of a mile from the pickets, she anchored. Saw the Laura go to her. Before the Laura got to her I saw them dip the flag. A schooner was coming in, and she hauled up for her. That schooner went within hailing distance of the Savory, & then kept off, & came into the canal. I manned a boat and went out of the canal towards the Savory. Went out clear of the pickets, broke the forward tholepin, and had to return. Whilst I was waiting for my own boat, the Laura came alongside of the Savory, and I should think she struck her rather quartering. When I started for the Savory I had but one man who was accustomed pulling an oar; the other two were niggers. The sea was not so very heavy; have seen rougher weather. Had I had a proper crew, I would have reached the Savory with all ease. Without the accident to the tholepin,
72 I would have reached the Savory with the men I had, I think, for I had passed the worst of the way. The Savory was within ⅞ths of a mile from the pickets. Have been a master of vessels 14 years; an officer of vessels 23 years, on sailing and steam vessels. Have been a passenger on boats on the lake half a dozen times within the last 18 months. Was laying at the mouth of the lake from about first to latter end of Jan'y, '66, for repairs. The wind was blowing square on to the pickets when I started for the Savory. I did see the Laura go towards the Savory the 2d time, and saw her tow her off. I should not call it a good judgment to take the Savory from her anchorage & tow her across the lake as a safe place. I know the Laura. She could have dropped the Savory into the new canal, in my judgment. This is what I would have done. Have been in the towing business. Have known the Savory some time. I think she was fit for the lake trade; think she could go as well as other boats I seen on the lake. Would trust myself on her as well as any other boat like her. These boats have to lay
73 by in a heavy norther, on account of their guards. The Savory did not appear to be laboring much. She would have been more exposed being out at sea than laying there at anchor. The effect of towing the Savory by the Laura would be to submerge the bow of the Savory. Have been in Government employ, and whilst there have been on river boats. I was the mate of the Alice Virian. Made one trip to Mobile.

Cross-ex.:

Never navigated in Lake Pontchartrain except as passenger. Don't know that there is anything peculiar about the navigation of the lake, any more than shoal water and short sea. High-pressure boats are not as well adapted to the lake navigation as low-pressure boats. Have never been on the lake in a very heavy storm. This was the heavi'st storm I have experienced, on the 20 Jan'y last, on the lake, and was in an open boat; this was a metallic life-boat; these life-boats are built for the purpose to go out in rough weather; I could see the Sa-
74 vory plain enough without a glass; did not see anything was the matter with her chimney; the Alice Virian was repairing at the new canal; I run on her to Mobile one trip, when she was laid up for sale there; she used to run up the Alabama river; is 3 or 500 tons burthen; the tonnage of the Savory I cannot tell, but she is much

smaller; I would call her a handy little tow-boat; suppose she was built for river trade or the lake; don't know which; think she was a sharper vessel than Mississippi boats usually are, and of deeper size; suppose she was flat-bottomed, but don't know; she had a cabin above her hull; can't say about her engine; whether she was out above the water line or not; had one chimney, one or 2 engines; don't know.

Re-ex.:

High-pressure boats are used on the lakes; have seen 3 waiting for a chance to go out; am sure I have seen three.

(Sig.) CH'S E. DAYTON.

Sworn to & subscribed before me this 21st March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

75 *Testimony for claimant.*

NORCROSS & AL. *vs.* ST'R LAURA. } No. 8357.

Testimony taken before U. S. comm'r, March 23, 1866. Present, Sullivan, B. & H., and C. Roselius.

FRANK NEWMAN, sworn for def't:

Was the pilot on the Laura on 20 Jan'y, 1866. We left Mandeville that morning at about 9 o'clock, for Lakeport. When we came towards Lakeport the capt. of the Laura stated "There is a boat that has her flag hoisted," and he took a glass to see what boat it was; found it was the Savory; but he could not discern at that time whether the union was down or not, until we came close to the breakwaters; when we came near, we saw she had the union down, and the capt. told me to steer for the Savory, & see what they wanted; I did so; run right close to her stern, and the capt. of the Laura asked them on the Savory whether
76 they needed any assistance; the captain of the Savory hailed to take him and the crew and passengers off; we then came up alongside of the Savory; run on her port side; stopped our boat; when came abreast of her wheel-house, the sea raised our boat, (the Laura,) & our stern cut the outside of the Savory's wheel-house; our capt. said to the capt. of the Savory, "I am sorry that I did hurt your wheel-house;" the capt. of the Savory replied, "It is nothing, capt., as long as you get my crew & passengers off the Savory." Then we got a line to the Savory's stern, so that the passengers could come on the Laura, and all the passengers came aboard. After all were aboard, we went to Lakeport, and landed the passengers at the wharf. The crew, capt., officers, & passengers of the Savory had come all aboard; nobody was left on the Savory, as far as I know; I was in the pilot-house all the time, & could see all outside, but not inside; they got on the Laura as quick as they could; there was no one in apparent command at the time on the Savory; from what I could see, every one was anxious to leave the Savory as quick as possible; heard the captain of the Savory say, after he had
77 come on the Laura, & whilst we made for the wharf with the passengers, "There are $5,000 gone to the devil." After we had made our landing, we took our freight & passengers for our return trip, and the capt. then told me to steer for the Savory, which I did; when we

got close to her, the captain told me to land on her starboard side; we did so, and put three of our men on board; gave them lines to make fast; the capt. told me to ring ahead bell, and we started ahead; after which I could not see the Savory, as I was in the pilot-house, which is closed in the rear and on the sides; we had run 10 or 12 miles off shore, to the Madisonville side, when the capt. told me to stop the boat, as the Savory had capsized; did so, and turned her round & picked up 3 or 4 men that had been on the Savory; when I turned round, I saw the Savory turned up on her bottom, and 3 men on her—2 on her bottom and one on the ladder, floating; these men we picked up; the Savory
78 was between 3, 3½, or 4 miles from shore, out in the lake, at anchor, when I first went to her, and about midway between the pickets of the new and old canal; the pickets are about ¼ of a mile from shore; can't say exactly; her chimney was a kind of loose when we first went to the Savory; the wind was blowing heavy from the north, and a heavy sea; it *seem* to me, as far as I could see, that the Savory labored pretty heavy in the sea; did not see that the sea washed over her deck the first time we came to her, but on the 2d time, when every dip of the waves would wash over her forward deck. The weather was blowing very heavy when we were alongside of her; it continued so all the way of our return to Madisonville. I have been following the sea & Lake Ponchartrain since 1848 or 1849; before that time, since 19 years of age, I sailed on the ocean; sailed from England at the age of 5 years; am 44 years old; born in 1822. The Savory is a high-pressure boat; could not say whether the Savory was a safe boat for the lake trade; that depends upon the building of the hull; if the
79 hull is strong, it will stand. A boat *of* the lake trade ought to be built deep in the water; some 6 feet; a flat-bottomed boat is safe for the lake trade, provided it has the timber; I should say the Savory drew about 4 feet of water, and was about 2 & 2½ feet out of the water; don't know how her guards were; she had a high cabin, a boiler-deck, & hurricane roof. A low-pressure boat, if built like the Laura, is far superior for the lake navigation *than* the boats built on the principle of Mississippi boats. If it blew that night, I mean the night of the 20th, as hard as it blew in day time, I don't think the Savory could have ridden out the gale; I was in Madisonville, up the Tchefuncta River, that night; I could not say what was the object of taking the Savory across the lake; the capt. said it was to save her. In bringing her over on that side of the lake she would have been protected from the wind that blew from the north.

Cross-ex.:

Am now pilot on the Laura; receive $75 a month. When the Laura came up to the Savory, the capt. asked them what they wanted. Her
80 capt's answer was, Take my crew and passengers off. His precise words were, Take us off; my crew and my passengers. As nigh as I could see, we cut the outside of the wheel-house down, when we came up. Could not say that we cut the bridge-tree down. All I saw was the outside planks were cut down. We remain' some ten minutes alongside of her. Don't know Capt. Cranmer at all. Might know him by sight. Did not know him when he came on board. First learned who he was when he was on the Laura, and heard the conversation about the $5,000 gone. Don't know there was any one else present than the captains of the Savory and of the Laura. We landed at the Pontchartrain wharf, and left that wharf on the return of the 12 o'clock train from the city. When we came to the Savory the 2d time,

we came to her on the starboard side and touched her; heard something break on the Savory, and the capt. stated he had stove in some of the bulwarks, but I could not see the damage done; saw the
81 3 men jump on the Savory from the Laura. We made between 4 & 5 miles an hour when we started with the Savory across the lake. It took us about 20 minutes to reach the Pontch. wharf with the passengers from the Savory. The place where she was, was from 2½ *or* 3 miles from the wharf. She was nearer to the New Basin than the Pontch. wharf by ½ or a mile. The pickets were hardly ¼ of a mile from the shore at the New Basin; suspect the Laura's tonnage to be some 100 tons. Can't say, but she is much larger than the Savory—a low-pressure boat—powerful good sea-boat. She would have no trouble in towing a boat like the Savory anywheres in the lake. We had the usual lines. A vessel running on the lake should have a hold of some 8 feet, 4 feet in the water and 3 or 4 feet out. A vessel built like the Laura is better than one built like the Savory, because she can run in and outside. I don't think it was safer for the Savory to be at anchor than to be towed by the Laura across the lake, as she rode the
82 waves just as well. Had the Savory gone some 8 miles further, she would have been in smooth water and been perfectly safe. Don't think she could have stood it out at the Pontchartrain wharf, as the sea rolled too heavy on to that wharf. If she could have got into the new or old canal, she would have been perfectly safe.

Re-ex.:

The Laura runs about 10 or 12 knots an hour, if she has nothing behind. We crossed the lake in 2 hours & 5 minutes; the distance is about 22 miles.

(Sig.) F. NEWMAN.

Sworn to & subscribed before me this 23 March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Notice to take testimony.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

To Sullivan, Billings & Hughes, Esq'rs:

You are hereby notified that testimony will be taken in the
83 above-entitled cause, on Thursday, the 29th day of March, 1866, at the clerk's office of this court, at 6 o'clock, p. m., on behalf of the claimant.

N. O., March 24, 1866.

K. LOEW, *D'y Clk.*

Service.

Rec'd March 26, 1866, and on the same day, month, and year, served a copy of the within notice on Sullivan, Billings & Hughes, the att'ys named herein, by leaving the same at their office, in the hands of Long, esq., p'lly assistant to the above-named firm.

New Orleans, March 27, 1866.

M. EGAN,
D'y U. S. M'h'l.

Testimony for libellants.

MARCH 24, 1866.

NORCROSS & AL. vs. ST'R LAURA. } 8357.

Testimony taken before U. S. comm'r, March 24, 1866. Present, S., B. & H. and C. Roselius.

WILLIAM D. CRAFT, sworn for libellants, says: My occupation is a ship carpenter; have been at work at this trade about thirty years.

84 About 3 months ago, I did work on the st'b't Savory for Capt. Perkins, of Norcross, Perkins & Hersey. Savory was then lying in the New Basin, New Orleans. I cut off all her guards forward of the wheels and put on bulwarks, stanchions, and rail. The Savory, after being repaired by me, was as strong a vessel as I ever worked upon, of her class and size. She had no rotten or defective timbers, and as to her hull on which I worked, she was thoroughly sound and ship-shape. In order to remove her guards, I had to saw off every deck-beam, & I know, therefore, that every one was perfectly sound. The Savory had about five feet depth of hold and drew 3 or 4 feet water; the bulwarks which I put in were about 2½ feet high above the deck, and if broken off, would let high waves dash in on the deck and forward hatch-way. Know that the Savory had been running on the lake before I made alterations on her. Cannot state how long she had been so running. I am now engaged as ship carpenter on the st'r Alabama, bound for New York, and expect to leave New Orleans this evening, at 6 o'clock, on said Alabama.

85 Cross-ex.:

Do not know whether the Savory was built for the sea or river trade?

Have seen sea boats with cabins on, such as she had. Have seen such in N. Y. City. Her style and built was not like the Miss. River boats.

(Sig.) W'M D. CRAFT.

Sworn to & subscribed before me this 24th of March, 1866.

C. CLAIBORNE,
U. S. Comm'r.

Testimony for claimant.

NORCROSS & AL. vs. ST'R LAURA. } 8357.

Testimony for claimant. Present, S., B. & H. & C. Roselius.

MARTIN B. WOOLFLEY, sworn for the claimant, says:

I am the engineer on the Laura, and was on the 20th Jan'y, 1866. In coming over from Mandeville, we discovered the Savory having a flag of distress out. Afterwards we went to see what she wanted, and took her passengers off and landed them at the wharf. Had a conver-

sation with the clerk of the Savory on the Laura. I t'ought first
86 he was the captain, and asked him how it came that they were laying there. He replied that it was foggy and could not see the light to go into the basin, and that while laying there a norther came up, and I asked him then, why they did not run in. He said they were afraid the boat would turn over, the wind blowing too hard.

(Pl'ffs' counsel objects to the whole of the conversation between witness and the clerk.)

The capt. asked me if I had wood enough to bring the Savory across the lake. I replied I had not, and we then took more wood in. The capt. and owner also asked me if I could tow the Savory across the lake, and I replied I thought I could, notwithstanding the wind that blew at the time.

(Pl'ffs' att'y objects to all the declarations of the capt. and owner.)

We took in our cargo & passengers at the usual time, and went to the Savory; took her in tow and started across the lake. What transpired after I don't know, because I could not see from the engine-room.

Can't say how far from the shore the Savory lay when we went to
87 her. Might have been 5 or 6 miles. She was laying right straight off the new canal, as near as I could judge. Can't say but it might have been 5 or 6 miles from the pickets. The Savory was a high-pressure boat, built in the style of Mississippi boats, I think. Had a small cabin above deck, none under. A boat of her make is not apt to go to sea. A boat of her make is not calculated for lake navigation. My machinery had been stopped when we approached the Savory the first time. Rec'd a signal from the gong leading to the pilot-house to stop. When we touched the Savory, we had stopped some 5 or 10 minutes. After having stopped, I don't suppose we could have had any headway when we touched her.

Cross-ex.:

Am now engineer on the Laura. My wages are $150 a month. My wages are paid me on board. Have been an engineer on steamers for 8 or 10 years—on the river and on sea. Was on the Q. M. Depart. a long while. Was for a year steady running from the lake end to
88 Pensacola & Apalachicola. Went to New York several times; that's all the deep sea navigation I had. Have seen the flag of distress from the lower deck of the Laura. Saw some of the passengers go aboard the first time. We might have been 15 or 20 minutes alongside the Savory. After having stopped the engine, I don't think the Laura would have gone forward further than the length of the boat in the teeth of the wind. I think we struck the Savory the 2d time we went to her, from hearing a plank break. I don't call Lake Pontchartrain the sea, when I say the Savory was not fit for sea navigation. It does not require quite as strong a boat for the lake as for sea navigation. Was running on the lake for about 2 years since the war. During that time I have known many boats like the Savory's build, run on the lake. The Savory and Laura were opposition boats.

(Sig.) MARTIN B. WOOLFLEY.

Sworn to and subscribed before me, this 27 March, 1866.

CHA'S CLAIBORNE,

89 *U. S. Comm'r.*

Testimony for claimant.

NORCROSS & AL
vs.
ST'R LAURA. } No. 8357.

Testimony taken March 28, '66, before C. Claiborne, U. S. comm'r, in the presence of Sullivan, B. & H. for pl'ff and C. Roselius for claimant.

CH'S W. WHITE, sworn for claimant, says:

I know the st'b't W. B. Savory. I knew the boat on the 20th of Jan'y. I was on board of her. I was on board of her as a passenger. I got on board at the mouth of Tangipaho River, about three o'clock on Friday evening the 19th of Jan'y. The boat was to convey me to N. Orleans. The weather was what you might call good weather when I got on board. The weather continued so till Saturday morning till about 7 o'clock. The wind then came out from the northwest.

At that time the boat had 10 cribs of timber & five round logs. She was towing them. In about 20 minutes after the wind struck the boat, they turned the timber loose and anchored it—this was from 3 to 5 miles from the N. O. shore. Between 8 and 9 o'clock the Amer-
90 can flag was hoisted, union down, which is a signal of distress. The whistle was blown repeatedly. The capt. of the boat had it done. The Savory was anchored at that time. There was some conversation passed between me and the capt. at that time. After the flag was hoisted the capt. said it was done on purpose to bring some boat to take the passengers off. In a short time afterwards the capt. and the gentleman acting as clerk had a consultation, and said if they could get some st'b't along with them they would abandon the Savory, as they did not consider that she was safe. They said it was impossible to turn her around to the wind to put her into either of the basins. The pilot and the capt. said that. At this time, so far as I can judge, she was lying head to the wind very well. The sea was very rough. Every sea that came around washed her deck. I did not observed the condition of the forward hatch. I did observe the condition of the chimney. Two of the ties of the chimney were broken at the mouth of the Tangipaho, and ropes were substituted *to* the ties. The ropes did not keep the chimneys in a solid condition. The chimneys
91 were swinging backwards and forwards as the boat rolled. The pumps were tried repeatedly in my presence; the boat was not leaking at that time. The Savory was about 3½ miles from the New Orleans shore. I think she was about 3½ miles from the pickets, and about 5 miles from the old canal. The boat Laura went to the assistance of the Savory. The Laura came from the direction of Mandeville. She came against the wind. When she first saw our signals she was near to the Pontchartrain Railroad. The Laura came on the port side. When she came within hailing distance the capt. of the Laura asked the capt. of the Savory what he wanted. He said he wanted him to take all the passengers and hands on the Savory on the Laura. The Laura in the first place came up & steered along by the Savory and threw a hawser on board, which was missed; they then backed off and came head on to the Savory and struck her port wheel-house—this time they got the hawser fastened to a cleat on the stern of the Savory, and while she laid in that position all the passengers, officers, and
92 crew of the Savory got on the Laura, with such effects as they could throw on the Laura. There was nobody left on board of

the Savory. I did not see any order observed in going on board the Laura; everybody went as fast as he could.

Being asked what were the general expressions used by the passengers and crew before getting on board the Laura—

(Question objected to by libellants counsel.)

Says: As a general thing they seemed to be very anxious about their situation; they did not think themselves safe, especially the capt. & the clerk.

The Laura laid about ¾ of an hour alongside of the Savory. After the Laura had taken all the passengers, &c., on board, she landed them at the Ponchartrain Railroad. When I say that I was a passenger on board the Savory, I mean that they demanded passage of me when I landed at the Ponchartrain R. R. There were other passengers besides myself on board; there were at least 5 more. I saw them go into
93 the coffee-house opposite the Washington Hotel, & saw some of them settle *there* fare with the clerk of the boat. My business is that of a lumberman. I have been running schooners on the lake and I have a schooner running now. I have been master of a schooner on the lake. I understand the navigation of Lake Ponchartrain. The Savory was built for a river boat if I am not mistaken. I don't think such boats as the Savory are as well calculated for lake navigation as low-pressure boats. I don't understand anything about steam. All the engineers I heard speaking of low-pressure boats, say*s* that they are better calculated for salt water than high-pressure boats; this is upon what I base my opinion. Boats with their machinery & works above the water line are not as safe as those with their machinery and works below the water line. The Savory had high cabins, her machinery was set above the water line. From my experience of lake navigation, I think the Savory would have come out of the storm on certain
94 conditions. She could have done it, had they cut her chimneys down, tore the cabin off and threw off the deck load. Had not these conditions been complied with, I don't think she could.

Cross-ex.:

I really had an interest in the lumber, but another man shipped it. I came as a passenger, independently from any connection with the lumber. When I said that the capt. had the flag hoisted, union down, I mean that he ordered it. I heard him give the order. He was on deck when he gave the order; he was on deck, by the engine. He gave the order to the clerk, who was acting as mate also. I was close by him when he gave the order. There were some other passengers and crew. Mr. Robert Lanier and John Lanier, his son, and W. B. Robertson were also on the deck. The deck hands were there. I don't know their names. There were at least 6 of them. I don't remember any body else but those I named already. The capt. and the pilot were on the first deck aft when they said that they must leave the boat because they could not take her into either of the basins. The pilot first
95 said *that* afterwards it was decided on by the capt. and the clerk. The pilot said it to the capt., and the captain to the clerk. I don't think there was any body near enough to them to hear the conversation but myself. If there was, I did not observe it. The flag was hoisted about 9 o'clock, and the Laura came up about 11 o'clock. At the time the flag was hoisted, the sea was very rough and was no better when we left; it continued worst and worst. I remained on deck till the boat came up. I don't recollect having gone in the cabin but once. I was in it a very short time—about 5 or 10 minutes.

This conference between the capt. & clerk took place on the first deck; was on the first deck during these 2 hours. The capt. was on the first deck when he gave the order to have the flag hoisted. The Savory had bulwarks; these bulwarks did not extend all the way aft—they were only on the forward deck. I mean that the sea swept through that part of the deck that was not bulwarked. There were some that went over the bulwarks. When I say that every sea wash her deck,

96 I mean that the waves swept through her first deck, and not merely that the spray was thrown *in* into it. When the capt. said he wanted all the passengers and all the hands of the Savory on board of the Laura, he stood on the after door of the cabin. I was then close alongside of him. I went along with the captain. A portion of the passengers and part of the crew were as near*ly* as they could get. There were Mr. Scott Oliphant, Jno. Lanier, Mr. W. B. Robertson, Mr. Jno. R. Holmes; these are the passengers that I recollect seeing as near as *they could.* I remained there only a short time; I went down on the first deck. I staid there no more than one minute; I went back into the cabin. I staid there as long as it was necessary for me to take my carpet-bag in my hands. I then went out on the port wheel-house to get on the Laura. I was about 4 or 5 minutes waiting my chance to get on the Laura. It was ¾ of an hour after the capt. said he wanted all the passengers and hands of the Savory on the Laura. I saw nothing but valises and carpet-bags thrown on the

97 Laura. I could not say how many were thrown. I saw, from what I recollect, some of the passengers throw them. I could not notice *on* particular the ones that did it. The clerk demanded passage money of me after I had landed. Mr. W'm Robertson was present when the demand was made. There was nobody else present that I could mention. When he made this demand of me, it was in the coffee-house opposite the Washington Hotel. He demanded $2 50. I did not pay him. I had reasons for not paying him. The reason was that he did not land*ed* me himself. I was in the same room of the coffee-house when I saw some settling their fare with the clerk. I know that they were paying their passage. I am sure of it. I don't recollect the man's who built the Savory. She was built on Bayou Teche. I know not, of my personal knowledge, for whom and by whom she was built. I am positive that the Savory's machinery & works rested on her 1st deck, above the water line. I am as positive about that statement as I am of any other statement that I have made.

98 Question. What opportunities had you that would enable you to give an opinion as to whether, how long, the Savory or any other st'b't could enduro a storm?

Answer. I have been on a steamer in the Gulf and have been on steamers & sailing vessels on the lake in heavy weather. In the Gulf I was on a steamer, in the capacity of a carpenter, for 3 months. I have travelled on steamers on the lake as a passenger. I encountered one storm in the Gulf and one on the lake. The vessel I was on in the gulf rode out the storm. The vessel on the lake was the Savory. In the first place the cabin and chimney made her top heavy; in the next place, if the deck load had been thrown off, it would have made her lighter; these are the reasons why I said that on certain conditions she could have ridden out the storm. When I speak of throwing off the deck load to lighten up a vessel, I speak *for* my own experience. As far as the other conditions are concerned, I don't speak from my own experience but from my own reason. The Savory had been enduring the gale for 4 hours when I left her. There was nothing in the

condition of the Savory except the increasing of the storm which
99 would have prevented her from riding out the storm as well as she had been doing up to the time I left. I don't know how long the storm continued, because I left the Ponchartrain landing and came to town.

(Sig.) C. W. WHITE.

Sworn to & subscribed before me this 28th March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

LAFAYETTE FOLGER, sworn for claimant, says:

I was a passenger on the Laura on the day she took the Savory in tow. She left the end of the railroad, and took the Savory in tow. The Savory was then lying at anchor. The waves were breaking over the Savory's bow. We came up alongside of her. The chimney of the Savory appeared to be swinging a little. She was rolling. She was then head to the sea. We towed her about 1½ hour in the direction of Mandeville when she capsized. We did not make much headway whilst we had her in tow. I did not observe anything in the condition of the Savory while we had her in tow, except that the chimney was swinging backwards and forward, & that she was gradually taking water
100 in her hold, which I knew from the fact that she was heeling over, in which condition she ran for about 1½ hour, and then capsized. The heeling over was gradually increasing. I think she heeled on the starboard side. There were 3 men on board of her, who were put there by the Laura. The storm was blowing heavy all the way across; it continued blowing when I went to bed that same night.

Cross-ex.:

The wind was northwest when he had the Savory in tow. We were moving nearly north. We had nearly a head sea. We must have probably towed the Savory about 5 miles when she capsized. I supposed the Savory was lying about 3 miles from the nearest shore.

(Sig.) LAFAYETTE FOLGER.

Sworn to and subscribed before me this 28 March, '66.

CH'S CLAIBORNE,
U. S. Comm'r.

C. M. EMERSON, sworn for claimant, says:

I was a passenger on board of the Laura when she took the Savory in tow. Before we reached the Savory I did not observe anything
101 particular, but when we reached her she was swinging out her anchor, head to the wind. It was blowing a gale. I observed that the chimney had broken from some of the fastenings, and was swinging to the starboard side, but as she rolled and pitched the chimney would swing on both sides of the ship. The starboard bow was depressed, and the sea was breaking over her. She was taken in tow by the Laura; 4 men were put on board from the Laura. We had got 8 or 10 miles in the lake when she capsized. We had towed her about 1½ or 1¾ hours, to the best of my knowledge. She was gradually sinking by the starboard bow. She capsized on that side. The chimney was always in the same condition, laying to the starboard side, swinging backward and forward. I was looking every moment to see her go down. The Savory was a flat-bottomed boat, or nearly so. She was

built like the ordinary high-pressure boats of the Mississippi, according to my impression. If the Savory had been towed up across the lake to Mandeville, she would have been under a windward shore. The
102 wind was blowing from that shore, which would have the effect of protecting her from the weather. The Savory was lying about 3 miles from the nearest shore, off the new canal.

Cross-ex.:

When we took her in tow I suspected we could do nothing with her, as she was then going down gradually. I judged at the time that if the Savory was leaking at the time they took her in tow, they could not have carried her across. If she was not leaking they might possibly have brought her across. I considered, in my judgment, and such was my impression, that it was a useless act on their part to attempt to bring the Savory across the lake in tow of the Laura, as she would have gone down at anchor in the course of the day. This is my impression as I saw the boat. I know nothing of the condition of the Savory, nor do I profess to be a judge in such matter. She might have swung there for 3 weeks for ought I know.

Question. What was there to hinder her being dropped in on this side?

Says: My opinion, at the time, was that it would be a dangerous
103 undertaking, and would expose both the Laura and the Savory *of* getting lost. The wind was blowing directly across the mouth of the new canal. There would have been no difficulty of getting the Laura aground on this side. In that gale they could not have dropped her into the Pontch. R. R. wharf on acc't of the wind. They might have dropped ashore directly with the wind, which would have brought her about the new canal, I judge.

Re-ex.:

Had she been dropped ashore she would have stood a pretty good chance to go to pieces, as the gale blew very hard all day. Had she not sprung a leak at anchor, she would certainly have stood a better chance than aground ashore—I mean if she did not leak at anchor. I don't know that she leaked.

Re-cross:

I think it was, perhaps, better to attempt to tow her across, and will add, that if she had sprung a leak, it was useless to do anything at all with her.

104 (Sig.) CH'S M. EMERSON.

Sworn to and subscribed before me this 28th March, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Notice to take testimony.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

To SULLIVAN, BILLINGS & HUGHES, Esq'rs:

You are hereby notified that testimony will be taken in the above-entitled cause on Monday, the 2d Ap'l, '66, at the clerk's office, of this court, at 6 p. m., on behalf of claimant.

N. O., Ap'l 2d, '66.

(Sig.) K. LOEW, *D'y Clk.*

Service.

Rec'd Ap'l 2d, '66. Served a copy of the within notice on the attorneys named herein, personally, on the 2d Ap'l, '66, at their office, in the hands of A. Long, esq.

N. O., Ap'l 2d, '66.

(Sig.) J. J. PREIS,
D'y U. S. Marshal.

Testimony for claimant.

105 NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

Testimony taken in presence of Sullivan, Billings & Hughes for libellants, & C. Roselius for claimant. April 7, 1866.

CH'S E. WHITTEMORE, sworn for claimant, says:

I am an inspector of steamboat boilers, in Government employ. Am acquainted with Cranmer, late capt. of the Savory.

Being asked, Did you have a conversation with this capt. in regard to the Savory? says, "Yes."

(Question and answer objected to by pl'ff's att'y.)

I was standing on the wharf when the Laura came from the Savory. I had seen the Savery out there with her colors half-masted; could not see distinctly but suppose I saw something white, indicating she was in distress. When the Laura came to the wharf Capt. Cranmer was on deck, forward of the pilot-house. I asked Cranmer what was the matter with his boat. He said "The damned thing had gone, or would go down, to hell pretty soon." He then came ashore & told me he had come to the place where the Savory was about 4 o'clock, with a
106 raft in tow, & that it blowed so hard that he did not think it safe to go into the bayou; that the raft which he had in tow gave him a great deal of trouble, & had partly broke up; that it was his intention to lay until daylight & go into the canal; that the wind had increased to such an extent that he was afraid to get the anchor up and turn her around for fear of capsizing her; that he had signalized to several schooners that passed after daylight, but they did not go to his assistance; that when the Laura came along he ordered her alongside to take his passengers, himself, and crew off. I asked the capt. whether his vessel made much water. He said she did, & he asked me then if he had done right in saving his passengers and crew. In coming up in the car he told me he did not think the Savory could have held out for an hour and that he would not stay on her for all the boats in the lake, and that the damned thing was not fit for the lake, anyhow. Cranmer appeared very much confused and scared. I issued a license to the Savory, but not to carry passengers. She had no license to carry passengers.

(Pl'ffs object to the last answer.)

107 Cross-ex.:

I reside in 3d district, on St. Ferdinand street. I am an inspector of boilers since 3rd of last October. I have my office in the custom-house building where I am generally to be found. Was at Ponteh. wharf; came there by the 9 o'clock car. Went there to see some members of my family embark on the Laura, but the weather was so rough that I did not

let them cross. The thing I saw from the wharf on the Savory was of a white color, but I could not distinctly say what it was, the distance being too far, but I saw the Savory plainly. Saw sometimes the breakers break over her bow—the spray would dash over the bow. I think the colors were on the stern and on the cabin. I saw the Laura round to the Savory. Saw her come away from the Savory. She may have been alongside of her from 5 to 15 minutes. I looked at her from the stern of the Manhattan, laying at the extremity of the wharf. I have known Cran-
108 mer for 8 or 10 years. Have known him as an engineer on the Natchez, running in the Mississippi River, and other river boats. My family never left the cars; they returned to the city by the next car. They must have come to the lake by the 11 o'clock car. The first conversation I had with the capt. was whilst he was on the Laura; the next close to the gangway plank on the wharf; the next in the car, coming to town. In the cars he told me he was going to town get a tug and save the Savory, if possible; that these were his intentions; he called me to him when he was in the cars and told me so. I am the only inspector of boilers for the Government in this city, to my knowledge. Whenever application is made to me I inspect passenger boats, tug boats, and any other kind of boats propelled by steam. It is my duty to inspect when a certificate has expired. A certificate, in order to be valid, must be signed by myself and the inspector of hulls. A certificate may be issued from
109 the office without my signature, but such a certificate is not legal.

I did examine the boilers of the Planet, Alliance, & Essex. It is not to my knowledge that licenses were issued in Oct'r last, by any other depart't in this city. We generally specify in our licenses whether the boat is a passenger or freight boat. If any passenger license was ever applied for by Capt. Cranmer for the Savory, I don't know it. A passenger license was applied for by Capt. Whitney in Oct'r last, for the Savory, but am not certain of the exact time. It was a verbal application at the office. All applications must be made in writing. I accept no verbal applications. A boat cannot legally carry passengers unless she has a license to that effect.

(Sig.) CH'S E. WHITMORE.

Sworn to and subscribed before me this 7 Ap'l, 1866.

K. LOEW, *D'y Clk.*

Testimony for libellants.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

GEO. NORCROSS, recalled, says:

110 The average income of the Savory per trip was about $230. I received the money, as clerk of the boat. The books are lost. I collected no fare from any of the lumbermen that were on the Savory at the time—neither then nor after. One of them came to the office in town and volunteered to pay his fare, which was not accepted.

Cross-ex.:

I don't know that any of the freight was collected at all.

(Sig.) GEO. C. NORCROSS.

Sworn to & subscribed before me this 9th Ap'l, 1866.

CH'S CLAIBORNE,
U. S. Com'r.

Testimony for libellants.

NORCROSS & AL.
vs.
ST'R LAURA. } 8357.

Testimony on behalf of libell'ts, taken April 19, 1866, before C. Claiborne, U. S. comm'r.

R. I. BRENAN, sworn for libellants, says:

I am a resident of this city; was on board of the Laura at the time of this accident, in Jan'y last. After we left the wharf, hearing the Laura had deviated from her regular course, I enquired for the
111 reason, and was told that we were making for the Savory, which was in distress. I thought the Savory lay from 1½ to 2 miles from the breakwaters of the pickets off St. John's Bayou; this I judged from my own observation. The Savory was then at anchor. As well as I remember, she had two anchors out. We proceeded to the Savory. When we came up the Laura struck her with considerable force, so much that it upset and staggered me in the cabin, where I caught hold of the bulwarks to sustain myself. Can't say the extent of damage done to the Savory; but I know that much, that some of the outer works of her wheel-house or kitchen were broken in; this was on the starboard side. After this the Savory was taken in tow by the Laura, & 3 men put aboard. Her hawsers were cut, so as to enable her to move in the water. The cables of her anchors were cut, and the Laura proceeded on her voyage, with the Savory in tow. We had a very heavy gale; the progress was scarcely any; in three hours we had not made over
1½ mile. The Savory at that time, to wit, at the end of the 3
112 hours, had listed considerably to the starboard side, and was filling considerably with water, as was the report, and progress was stayed for awhile, previous to which her chimneys tumbled and fell over. When I first saw the Savory, and before we had come to her, one of the chimneys was entirely separated from the furnace, and no fire—all the fire was out. When the progress was again commenced onward to the other shore of the lake, the opinion of myself, as well as that of any one else with whom I conversed on board, was that the Savory could not stand the towing, & within ½ an hour after that time the Savory was pulled to pieces, and went down, bow forward. I have crossed the lake frequently. Before the war I was on the lake twice a week as a passenger. I am not a nautical man. Travelled on the lake for 40 years.

Being asked, "Do you think the Savory could have ridden out the gale, if left alone by the Laura on her anchorage?"

(Def't objects to the question.)

Says: I should think she could have ridden out the gale, be-
113 cause, when we approached her, she was riding very easy at her anchorage, and the wind had not increased when we were approaching.

Being asked whether, in his opinion, it was a good judgment to take her from her anchorage, and bring her across the lake?

(Objected to by def't.)

Says: With the wind dead ahead, as there was at that time, and the Laura being a much heavier vessel than the Savory, I deemed it an act of imprudence on the part of the Laura to attempt crossing the Savory

to the other side of the lake, for we had then some 20 miles to go in the face of a head sea.

Cross-ex.:

I am 62½ years of age; am a notary public by profession; can't say that I am a nautical man; have been a great many times to sea, and sometimes obliged to work my passage. The answers I have given to the questions are derived from my own judgment as an individual, & not professionally. My sight is not good; am short-sighted; can distinguish a house or a steamboat at a distance of a mile, but could
114 not distingush minor objects. I think I could distinguish the features of a friend whom I knew well at a distance of 100 feet. The Laura struck the Savory about her wheel-house; am confident of that. I distinguished the two chimneys of the Savory as we were coming up at her port side. I clearly distinguished her 2 chimneys. It is my confident opinion that I saw her two chimneys, one of which was not perpendicular, but out of place and knocked aside. Both chimneys disappeared about 1 hour before the Savory sunk. The Laura was some 120 feet from the Savory when the chimney fell. She was at the extremity of her hawsers. I did not see the chimneys fall, but when I looked at the boat I saw they were gone. Chimneys are remarkable features on board a boat. I saw them before, and saw again that they had disappeared and were no longer there. We got to Madisonville after dark. We were some 5 hours later in our trip; arrived at Mandeville 1 hour or 1½ hours after dark; suppose the Savory sunk between 3 *or* 4 o'clock; had no watch; did not look at the
115 clock. I think that the Savory sunk from ½ to a mile from the place we had taken her. We started from the wharf in the Laura at ½ past 2. I judged we had made ½ or 1 mile when the Savory sunk, from the appearance of the shore. At that time we must have been from 2 to 2½ miles from the shore. It is possible we may have gone a larger distance than I have stated. I have given my answer as my opinion. I have expressed my opinion very freely on board of the Laura at the time, and again to Mr. Norcross, one of the libellants, on Friday last.

Re-ex.:

Never knew Mr. Norcross before Friday last; heard his name, but never saw him; don't know the other members, except that I have seen Mr. Perkins at my office; understood it was Mr. Perkins. This was last fall.

(Sig.) R. BRENAN.

Sworn to & subscribed before me this 19 Ap'l, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

116 *Testimony for libellants.*

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

Testimony on behalf of libellants, taken before C. Claiborne, U. S. comm'r, in presence of counsel for both parties.

H. C. RARIDEN, being sworn for libellants, says:

I reside in this city, No. 163 St. Charles street. I have frequently

seen the st'b't Savory. I knew her during the rebellion, probably a year previous to the close of the rebellion. I knew her after Messrs. Norcross & Perkins purchased her. Mr. Norton wanted a side-wheel boat for the small rivers of Alabama & Florida. I told him the Savory would suit him; that $9,000 was asked for her, and he told me to purchase her at that price. I called on Mr. Norcross or Mr. Perkins, I don't recollect which, and told him I had concluded to give him his price for the boat. He then informed me that she had sunk. This was about the time she was sunk. I have been connected sometimes with boats. I have experience in running boats. I have inspected
117 a great many boats. At that time boats like the Savory were very scarce, & commanded a very high price. She could have been sold for that price.

Cross-ex.:

I believe Norcross, Perkins & Co. purchased the boat from the Gov't; I don't know at what time; I do not know how much they paid for her. I could not state without seeing her what was her actual value for ordinary transportation; all small boats at that time were of high value for certain purposes—that is to say, to bring out cotton from the small streams or rivers—such boats would have paid for themselves in a short time at that time; there has been a great fall in the price of boats since that time. This boat was built in the ordinary style of Miss. River boats; I think she had a low cabin on her; she had Texas; she was built for bayou navigation; I think she was intended for Bayou Lafourche, or Plaquemines.

Re-ex.:

I am not positive that Mess. Norcross, Perkins & Co. purchased the boat from the Gov't. The value of boats, like all other commo-
118 dities, depend upon the demand.

(Sig.) H. C. RARIDEN.

Sworn to & subscribed before me this 26 Ap'l, '66.

CH'S CLAIBORNE,
U. S. Comm'r.

CHA'S T. ESTLIN, being sworn for libellants, says:

I reside in New Orleans. I was on board the Laura as a passenger, on the day of the accident. While the Laura was laying at her wharf, previous to her departure on her regular trip to Mandeville, I observed the st'b't Savory lying at anchor somewhere between 2 or 3 miles from either of the harbors of the Bayou St. John, New Canal, or Pontchartrain Railroad. The Savory, at the time of my observation, was flying a signal, apparently of distress; however, one of the officers of the Laura, the barkeeper, informed me that the Savory had been abandoned by her capt. & crew, and that it was the intention of the commanding officer of the Laura to tow her, on her return trip, to Madisonville. This information I found to be substantially correct, from the fact that the Laura cast loose her moorings and bore down upon her.
A norther, at that time, either had been or was blowing, and
119 probably its fury had been spent, and it was subsiding; the position of the Savory, at that time, was—her bow pointed towards Mandeville; she was lying head to the wind. The Laura, in bearing down upon her, was, so far as I am capable of judging, in the *through* of the sea; upon nearing the Savory she struck her somewhat violently

upon the starboard quarter, carrying away a portion of her guards & bulwarks, &, in my opinion—although not positive, not having made an inspection—the false sides of the Savory were stove in. The Laura put three of her hands on board the Savory, one of whom took charge of the wheel; the other two, I don't know what offices they performed; their first effort was instrumental in loosing the st'b't Savory from her moorings, whereupon a line was cast to them, from the Laura, upon which she immediately proceeded on her voyage, with the Savory in tow. After having towed the Savory, I presume from 1 hour to 1½ hours, she having, (i. e. the Savory,) in the mean time, careened considerably to the starboard—the side from which she was struck—capsized, and turned bottom upwards. The Laura approached the Savory
120 from the windward side; the force with which the Laura struck the Savory was sufficient to break her bulwarks and guards. The Laura was in the *through* of the sea, and the sea was pretty rough; she was more unmanageable than she would have been under different circumstances. I am interested in one steamboat; I have been a great deal on the lake, travelling particularly between Mandeville and New Orleans; in my judgment it was not safe to take the Savory in tow to cross her over to Madisonville.

(Objected to by claimant.)

I expressed my disapprobation at the time, for I believe that if the Savory had been left alone where she was she would have ridden out the gale; this is my opinion. She was riding the waves beautifully at the time, not making any water, so far as I could perceive; Mr. Frigerio, at the time, told me it was none of his doings, but the captain.

(Objected to by claimant.)

The Savory was struck by the Laura on the starboard bow, forward to the wheel. I don't think that high-pressure boats are fit for
121 the lake navigation; there are a great many high-pressure boats employed on the lake now.

Cross-ex.:

I had a conversation with the officers on board of the Laura; Mr. Frigerio threw the whole responsibility on the capt. The captain, previous and afterwards, stated that the fate of the Savory would be the fate of all high-pressure boats on the lake. He did not tell me what his intentions were; I was perfectly surprized when I was informed that they would tow the Savory on a rough sea across to Madisonville.

(Sig.) CH'S T. ESTLIN.

Sworn to & subscribed before me this 26 Ap'l, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Testimony for libellants.

MAY 12, '66.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

GEORGE DOUGALL, witness for libellants, being duly sworn, says:

I reside at No. 105 Euterpe street, New Orleans; occupation now, capt. sch'r Lelly, running on Lake Pontchartrain. In Jan'ry last I
122 was chief engineer of the st'r Alexandria; was then, and am now

part owner of said steamer; said steamer was then employed in jobbing and towing, on Lake Pontchartrain. On a Saturday evening in Jan'y, the same day I heard of the loss of the W. B. Savory, captain Perkins, of Norcross, Perkins, and Hersey, and the capt. of the Savory, came to us to charter us to go after the Savory; this was about 5 o'clock in the afternoon; the capt. of the Savory had been to us earlier in the day; cannot say how much earlier. We engaged to go after the Savory; started Sunday morning about 9 o'clock; we had heard before we started, that the Savory had been taken off by the Laura, & was by us supposed to be at Mandeville. The Alexandria was lying in the new basin, on Saturday, and started from there on Sunday morning; went on direct course to Mandeville; went in sight of Mandeville, so that we could see that the Savory was not there, then changed our
123 course for Madisonville; did not find the Savory there, but found Laura there; Capt. Perkins went ashore, & capt. of Savory, & in about ¾ of an hour returned to boat & ordered us back to N. O. The weather was fine, wind blowing moderately, lake somewhat rough; did not see the lake or know about storm on it on Saturday, the day before. I have been to sea since 1851—generally engineer; have been employed on the lake about seven months; five months of said time have been towing.

Question. Suppose a boat situated at from ½ to 3 miles from the entrance to the new canal, on this side lake, a storm raging, wind blowing from any point between north and west, do you think the Alexandria would be able to drop or tow such boat into safe position on this side lake?

I do. Have seen the boat, W. B. Savory, and think that a boat of her size could have been put into the old basin by the Alexandria, under circumstances named in question. If we had been applied
124 to, we, with the Alexandria, could have gone for the Savory at 2 or 3 o'clock, on Saturday. We recovered, on Monday, 2 cribs of timber, I think, belonging to the tow of the Savory. I think—can't say positively, without examining books—that Capt. Perkins paid us $175 for going to Madisonville after Savory.

Cross ex.:

I know nothing about the condition of the weather and lake on the Saturday preceding our departure; I know nothing about the condition or position of the Savory on said day. In saying that (on examination-in-chief) the Alexandria would have attempted to tow the Savory into the old basin, I say that provided we were paid the price we demanded, we would have made the attempt—the greater the risk, the larger the price. I would not have attempted to tow her on the other side; I think we could have succeeded in towing her in under all circumstances, never mind the condition of the weather, sea, or boat, provided she was not in a sinking condition. I do not know, of my own
125 knowledge, that the capt. of the Savory was on board of our boat on Saturday morning; on Saturday, at 5 o'clock, p. m., Capt. Perkins and the capt. of the Savory came down to us & chartered us to go after the Savory to Mandeville. We started the next morning, (Sunday,) because Capt. Perkins told us that would do.

(Sig.) GEORGE DOUGALL.

Sworn to and subscribed before me this 12 May, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Order.—Cause fixed.

NORCROSS & AL. vs. ST'R LAURA. } 8357.

On motion of Sullivan, Billings & Hughes, proctors for libellants, it is ordered that this cause be set for trial on Thursday, 22d inst., at 11 a. m., and that the claimant be notified thereof.—(Extract from minutes, May 15, '66.)

Notice.

NORCROSS & AL. vs. ST'R LAURA. } 8357.

To C. ROSELIUS, Esq.:

126 You are hereby notified the above cause has been assigned for trial on Tuesday, the 22d inst. at 11 a. m.

By order of court.

N. Orl's, May 15, 1866.

K. LOEW, *D'y Clk.*

Service.

Rec'd May 16, 1866, & on the same day, month, and year, served a copy of the within notice on C. Roselius, the att'y named herein personally, at his office, No. 133 Custom-house st., in this city.

New Orl's, May 16, 1866.

P. J. PREIS,
D'y U. S. Marshal.

Note of evidence taken on trial, May 22, 1866.

NORCROSS & AL. vs. ST'R LAURA. } No. 8357.

Libellants offered in evidence documents A & B. Also the testimony of Th's E. Cranmar, George C. Norcross, Ch's E. Dayton, N. C. Rariden, Ch's T. Estlin, Antonio Marco, George Dougal, R. J. Brenan, W. D. Craft, taken before C. Claiborne, U. S. comm'r, on file herein.

Claimant offered the testimony of L. Bollinger, W. H. Smith,
127 Jacob Nelson, C. W. White, L. Folger, C. M. Emerson, F. Newman, J. M. Tate, T. W. Crawford.

Capt. Perkins sworn for libellants.

Document "A," offered by libellants.

License No. 183 of a vessel above 20 tons to carry on the coasting trade for one year.

DISTRICT OF THE PORT OF NEW ORLEANS.

In pursuance of an act of Congress of the United States of America, entitled, "An act for enrolling and licensing ships or vessels to be employed in the coasting trade & fisheries, and for regulating the same:

Measurement, $14; tonnage dues, $12: p'd Oct. 13, '65.

F. W. Perkins, of New Orleans, State of Louisiana, having given bond that the steamer called the W. B. Savory, of New Orleans, whereof J. H. Whitney is master, burthen $40\frac{40}{100}$, as appears by her enrollment, dated at New Orleans, this 13th day of October, 1865, shall not be employed in any trade while this license shall continue in force, whereby the revenue of the United States shall be defrauded, and having sworn that the license shall not be used for any other vessel, nor for any other employment then hereby specified,

license is hereby granted for the said steamer W. B. Savory
128 to be employed in carrying on the coasting trade, for one year from the date hereof, and no longer.

Given under our hands and seal of office, at the custom-house, this 2d day of Dec., in the year 1865.

(Sig.) S. A. STOCKDALE,
D'y Collector.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, May 21, '66.

I hereby certify the above to be a true copy of the record of this office.

(Sig.) S. A. STOCKDALE,
D'y Coll'r.

Document "B," offered by libell'ts.—Enrollment.

No. 183. Permanent enrollment in conformity to an act of Congress of the United States of America, entitled, "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same, approved Feb'y 18, 1793, & of an act to regulate the admeasurement of tonnage of ships and vessels of the United States, approved May 6th, 1864.

F. W. Perkins, of New Orleans, State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn
129 that he is $\frac{1}{3}$ owner, R. F. Hersey $\frac{1}{3}$ owner, & A. W. Norcross $\frac{1}{3}$, both of the city and State aforesaid, (copartners,) comprising the firm of Norcross, Perkins & Hersey, and are citizens of the United States, and sole owners of the ship or vessel called the W. B. Savory, of New Orleans, whereof J. H. Whitney is at present master, & as he hath sworn is a citizen of the United States, and that the said ship or vessel was sold by the U. S. Q. M. Dep't, in this city, on the 4th day of October, 1865, as per enrollment No. 169, issued and dated at this port Mar. 20th, 1865, now surrendered property, being changed—

And said enrollment No. 169 having certified that the said ship or vessel has one deck and no mast, and that her length is $76\frac{9}{10}$ feet, her brea'th $19\frac{5}{10}$ feet, her depth $47\frac{}{10}$ feet, her height—$\frac{}{10}$ feet; that she measures 40 tons & $\frac{40}{100}$ viz:

Tonnage	$\frac{40}{100}$
Capacity under tonnage deck	40.40
Capacity between decks above tonnage deck	
Capacity of inclosures on the upper deck	
Total tonnage	40.40

And that she is a side-wheel steamer, has a *pinck* stern and plain head.

And the said F. W. Perkins having agreed to the description
130 and admeasurement above specified, and sufficient security hav-

ing been given according to the said acts, the said steamer has been duly enrolled at the port of New Orleans.

Given under our hand and seal at the port of New Orleans this 2d day of December, in the year 1865.

(Sig.) S. A. STOCKDALE,
D'y Coll'r.

(") JNO. C. WHITE,
D'y Naval Officer, District and Port of New Orleans.

COLLECTOR'S OFFICE, *May* 18, '66.

I hereby certify the above to be a true copy of the record in this office.

(Sig.) S. A. STOCKDALE,
D'y Coll'r.

(The testimony of the witnesses this day offered by the respective parties is already copied at previous pages. See Index.)

Hearing and continuance.

NORCROSS & AL. *vs.* STEAMER LAURA. } 8357.

This cause came up for trial—
Sullivan, Billings, & Hughes for libellants;
C. Roselius for claimant and defendant—
131 When, after hearing the pleadings and evidence in part, the cause is continued till to-morrow, 23d inst., at 11 a. m.—(Extract from the minutes of 22d May, 1866.)

Minute of evidence.

MAY 23D, 1866.

NORCROSS & AL. *vs.* ST'R LAURA. } 8357.

The claimant offered in evidence the testimony of Whitmore and M B. Woolfley, taken before U. S. comm'r and on file herein. (Already copied. See index.)

Also doc't "C."

E. Whitemore, A. A. Raudouin, & W. C. Flanders sworn for claimant.

Document "C," offered by defendant.

OFFICE BOARD U. S. LOCAL
INSPECTORS OF STEAMBOATS,
New Orleans, March 17th, 1866.

We hereby certify that, on the 13th of October, 1865, this board granted a certifiate to the W. B. Savory as a tow-boat, and not as a passenger boat.

(Sig.) CH'S E. WHITEMORE,
Inspector of Boilers.

(") W. C. FLANDERS,
Inspector of Hulls.

132 *Hearing and continuance.*

NORCROSS & AL. vs. ST'R LAURA. } 8357.

This cause continued from yesterday was resumed; and, after hearing further evidence and agreement of counsel, the same is again continued till to-morrow, 24 inst., at 11 a. m.—(Extract from the minutes of 23 May, 1866.)

Hearing and submission.

MAY 21, '66.

NORCROSS & AL. vs. ST'R LAURA. } 8357.

This cause came up again; and, after hearing the closing argument on behalf of the libellants, the court took time to advise.—(Extract from the minutes of 24 May, '66.)

Judgment.

A. W. NORCROSS, F. W. PERKINS, AND R. F. Hersey, vs. STEAMER LAURA. } 8357

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the libellants A. W. Norcross, F. W. Perkins, and
133 R. F. Hersey do have and recover judgment against the steamer Laura, and against Louis J. Frigerio, her owner, in personam, for the sum of four thousand dollars, with 5 % interest thereon from this date till paid, and costs of suit.

And the said steamer Laura having been delivered to the claimant & released from seizure upon the execution of a bond conditioned as the law directs,

It is further adjudged and decreed that Louis Frigerio, jr., agent, as principal, and D. Piaggio, as surety on the bond, be condemned in solido to pay the aforesaid judgment, with interest and costs.

Judgment rendered 11 June, 1866.

Judgment signed 15th June, 1866.

(Signed) E. H. DURELL, *Judge.*

Order of appeal.

JUNE 16TH, 1866.

A. W. NORCROSS & AL. vs. STEAMER LAURA. } 8357.

On motion of C. Roselius, esq., proctor for the claimant and defendant, Louis J. Frigerio, and for Louis Frigerio, jr., and D. Piaggio, sureties on the release bond, and on suggesting to the court that
134 the said parties feel agrieved by the final judgment herein ren-

dered against them on the 11th, and signed on the 15th instant, and are desirous of appealing therefrom suspensively:

It is ordered that a suspensive appeal, to operate as a supersedeas, be allowed them from said judgment, returnable to the circuit court of the United States for the 6th circuit and eastern district of Louisiana, the first Monday in November next, upon the appellants giving bond in the sum of $6,500, with good and solvent security, conditioned as the law directs.—(Extract from minutes of 16 June, '66.)

Appeal bond.—Filed June 16, 1866.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

District court of the United States.—In admiralty.

A. W. NORCROSS, F. W. PERKINS, & R. F. HERSEY, *vs.* STEAMER LAURA. } No. 8357.—Appeal bond.

Know all men by these presents that we, Louis J. Frigerio,
135 Louis J. Frigerio, jr., agent, and D. Piaggio, as principals, and R. Piaggio as surety, are held and firmly bound unto A. W. Norcross, F. W. Perkins, and R. F. Hersey, in the sum of six thousand five hundred dollars, to be paid to the said A. W. Norcross, F. W. Perkins, and R. F. Hersey, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at New Orleans the 16th June, 1866.

Whereas the above-named Louis J. Frigerio, Louis J. Frigerio, jr., agent, and D. Piaggio, have appealed to the next term of the circuit court of the United States for the 6th circuit & eastern district of Louisiana, from a final judgment of the district court of the United States for said district, rendered against The St'b't Laura and Louis J. Frigerio, Louis J. Frigerio, jr., agent, principal, and D. Piaggio surety on bond, on the 11 June, 1866, in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if
136 the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him if he fails to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

(Sig.) LOUIS J. FRIGERIO. [L. S.]
(") LOUIS FRIGERIO, JR.,
Per LOUIS FRIGERIO. [L. S.]
(") D. PIAGGIO. [L. S.]
(") R. PIAGGIO. [L. S.]

Signed, sealed, and delivered in presence of—

A. W. NORCROSS & AL.
vs.
ST'R LAURA & ALS. } 8357.

Testimony on behalf of appellant, taken before Ch's Claiborne, U. S. comm'r, this 21 June, 1866. Present, C. Roselius, for appell't, and J. P. Sullivan, one of the counsel for appellees.

D. PIAGGIO, a witness for appellant, being duly sworn, says:

I signed the appeal bond in the case of Norcross & al. vs. The Steamer Laura, as security for the sum of $6,500. I am worth that amount over and above all my debts and liabilities.

137 I am not a citizen of the U. S., but I reside in the city of New Orleans since 15 years. I own the store in which I do business; The same is worth $15,000.

(Sig.) D. PIAGGIO.

Sworn to & subscribed before me this 21 June, 1866.

CH'S CLAIBORNE,
U. S. Comm'r.

Clerk's certificate.

District court of the United States, eastern district of Louisiana.

I certify that the foregoing 143 pages do contain and form a full and complete transcript of all the proceedings had, documents filed, and evidence adduced on the trial of the case of A. W. Norcross, F. W. Perkins, & R. F. Hersey, vs. The Steamboat Laura, No. 8357 of the docket of said court.

In faith whereof I grant these presents, under my signature and the seal of our court, at New Orleans, this 23d day of July, 1866.

[SEAL.] K. LOEW, *D'y Clk.*

138 *Proceedings before the U. S. circuit court.—Order.—Cause continued, by consent.—Extract from the minutes.*

United States circuit court, fifth circuit, and district of Louisiana, April term, 1870.

NEW ORLEANS, *Thursday, May 5th*, 1870.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, presiding judge.

A. W. NORCROSS & AL.
vs.
ST'R LAURA. } No. 4072.

By consent of counsel in writing, the cause is continued till the 9th inst., at 11 a. m.

Testimony for appellants.—Filed May 6th, 1870.

A. W. NORCROSS & AL. *vs.* STEAMER LAURA. } No. 4072.

Testimony on behalf of appellants, taken before D. Urban, U. S. commissioner, by consent. Present, Roselius & Phillips, of counsel for appellants. Present, A. B. Long, & E. C. Billings, of counsel for appellees.

139 R. M. LANIER, being sworn, says:

I now reside in the new parish of Tangipaho, formerly part of the parish of St. Tammany, where I was born, & where I resided all my life. My business is a farmer and lumber dealer. I run a saw-mill and own the same. I was a member of the legislature, from the parish of St. Tammany, some fifteen or sixteen years ago; was also sheriff of that parish; was elected in 1862. I have not a particle of interest in this suit. I never knew the steamer W. B. Savory, until I employed her to go to the Tangipaho River, to get a tow of timber belonging to myself, at the mouth of the Tangipaho River. I first saw her then; got aboard of her in the basin in this city. I hired her for that purpose. She was a high-pressure boat; don't know what burden. She was a considerable size boat, and from what I could see, I took her to be an old boat. This boat came to the mouth of the Tangipaho River, and took my tow of timber in tow; this was some four or five years ago, and started for New Orleans. I was on the boat myself. She started with my timber late in the evening, a little before sundown, in a dead calm. The
140 boat run slowly along that night, until about three miles from the pickets in Lake Pontchartrain, off the New Orleans shore. I insisted on the captain bringing my timber in that night. When she got three miles from the pickets, off the New Orleans shore, she anchored; the captain said he would not bring in the timber that night. I considered the captain sober enough to attend to his business, but the whole crew had been up drinking and playing cards. I don't think Capt. Kramer had been playing cards, but he took his drink occasionally, along with the rest. The captain went to bed before day. In the morning at daylight, I went out on the bow of the boat to take a wash; I returned immediately into the cabin; said I, "Hallo, Captain Kramer, there is a northwester right here!" He got up, went immediately ; put an anchor to the hawser that was towing my timber, and hove the anchor overboard. He began to make preparations to get up his anchor; before he could do it, the storm struck us. He then commenced to blow his whistle, and continued to blow for several hours, to see if this signal would bring any person from the shore to his
141 relief; no one came. There were several flags raised on the boat when the Laura hove in sight. The Laura came down; she stood off a little piece from the Savory. Some one on the Laura *hollered* out, What do you want? Capt. Kramer replied, We want to leave this boat immediately. The Laura came up. In coming up to the Savory, she struck the wheel-house; the waves at the time *was* running very high. The clerk of the Savory, Mr. Norcross, was on the wheel-house at the time; he was the first man that left the boat; the captain, Kramer, was the third or fourth person that left the boat; the balance of the men got off as fast as they could; they could not but one man at a time

get off; they had to hold to the jack-staff of the Laura, and set their foot on the bow *on* the Laura to get off. After the storm struck the Savory, occasionally a large wave would go over her and put the fire out. The captain ordered his men continually to keep the pumps at work by hand. There was great confusion on board. This confusion was not confined to the passengers; it was general, and more among the officers. I could not say if the chimneys were blown down. Every
142 soul had left the cabin from the begining of the storm—officers and all. Preparatious were made to leave this boat, prior to the coming up of the Laura. The preparations were this: there was one metallic boat aboard, and one bale of cotton. Captain Kramer ordered his men to place a line all around the top of this metal boat, and secure it there, and to fix loops on this bale of cotton, for people to hold to it, in case she went to pieces. Capt. Frigerio, of the Laura, *that his the Laura*, brought the whole crew to the landing at the wharf of the Pontchartrain Railroad, some twenty-five or thirty in number. No compensation was demanded by the Laura, or paid for this service, to my knowledge. I paid nothing.

Question. From your knowledge of the condition of the Savory when the Laura rescued her passengers and crew, and considering the storm then prevailing, is it according to your judgment that the Savory could have survived the storm?

(Counsel for the libellants and appellees object to the question, on the ground that there is no evidence that the witness is competent to give an opinion as to the matter therein propounded.)

Answer. I don't think she could.

143 Question. Upon what facts do base your opinion?

(Same objection as above.)

Answer. From the pumps being continually at work, and from the officers, who were anxious to leave the boat, and did leave it. She undoubtedly made water; don't know what depth; did not go down to see. She was pumped all day. The captain said he could not manage her. I insisted upon his getting anchor up; he said he could not take it up; could not manage her; that she would strike bottom and go to pieces immediately. I have travelled on the lake often; for about thirty years, off and on; never have been a sailor. I have no knowledge of the waves; have knowledge of the weather; have been on the lake when it seemed as if the whole world would blow away. I have a knowledge of the danger of navigating this lake at times, on account of the storms. These storms have no particular time, as far as I know. The storm that the Savory was in, was a dangerous one—a very dangerous one. I don't know if the Laura was a high or low-pressure boat. The Savory
144 was undoubtedly not calculated for this kind of weather, or for a sea trip.

Cross-examined:

I did not ask the captain of the Laura to take my timber when I left the Savory; did not say a word about timber at all, on the Laura. I landed at the Pontchartrain Railroad wharf, took the cars & came up to the city.

(Signed) R. M. LANIER.

Sworn and subscribed before me this 5th May, 1870.

(Signed) D. URBAN,
U. S. Comm'r.

Order.—Cause continued.—Extract from the minutes of May 9th, 1870.

A. W. NORCROSS & AL.
vs.
STEAMER LAURA. } No. 4072.

This cause was called for trial, and by consent continued till the 14th inst., at 11 a. m.

Testimony for appellant.—Filed May 12th, 1870.

A. W. NORCROSS & AL.
vs.
STEAMER LAURA. } No. 4072.

145 Testimony on behalf of appellants taken before D. Urban, U. S. comm'r; taken by consent. Present, Roselius & Phillips, of counsel for appellants. Present, A. B. Long & E. C. Billings, of counsel for appellees.

WILLIAM B. ROBERTSON, sworn, says:

I reside in Tangipaho Parish; have resided there 44 years; am at present a farmer. I have been on vessels for twenty or twenty-five years on Lakes Pontchartrain and Borgne, and from here to Mobile. I have made a business of running on Lake Pontchartrain. I have navigated it from 1844 to spring of 1861, when I quit the lake and went on the lake again in 1865. I first went as cook; then deck-hand; then mate; then captain. I remember the steamboat W. B. Savory; was on her on her last trip from Tangipaho to New Orleans. I was not employed on board; was a passenger on board. The storm struck the Savory a little after daylight. The wind was blowing very fresh and strong from the northwest. The officers of the boat *blowed* their whistles; raised a white flag, and the old stars and stripes, which was
146 turned upside down. I asked the captain what was the matter. He said he thought the vessel would be lost; wanted assistance; wanted to get away. The first vessel, a sailing schooner, came by and asked what was the matter. The captain said, he wanted to leave the steamer. The vessel said, I can't assist you, and went on into the new pickets. They kept blowing their whistles and hoisting a white flag to attrac*k* attention until the Laura came to our assistance. The Laura came up, and as she came up close, her captain asked the captain of the Savory what he wanted. He said, my vessel is in leaking condition. I want to abandon her. I want to go ashore. The captain of the Laura then said, Which side will I come up on? The captain of the Savory said, On our port side. There was a line thrown aboard the Savory, and she was drawn up as carefully as could be. There was a very heavy sea at the time. The first man that left the Savory was the clerk; and the second, the captain; the crew and the passengers—don't know the number—then all got aboard of the steamer Laura. There was no person, that I know of, that was left on the Savory. I was next to
147 the last man that got off. Before this rescue, preparations had been made to leave her. There was a bale of cotton on board, which was got back aft as far as possible. The captain had loops of rope, about a foot and a half in length tied all around the bale of cotton for to throw overboard in case she should sink, and the loops were for persons to hold on; that is what the captain said. The life, boat was got back on the quarter deck, and lines were attached to it in the same manner. There was great confusion at this time amongst the

officers of the Savory. They were very much frightened. The pumps were kept going all the time. She made water. The waves broke over her bows, but whether any went down through the comb of the hatch, I can't say. I think the top of the smoke pipe was off. The cabin was very loose and shaking, and when the steamer rolled, it would crack and shake. I don't think the Savory would suit the lake trade. She was too flat on the bottom, and too slender in built; don't think she was suited for the trade in which she was in, in the condition that the Savory was in. I don't think she was calculated for that storm.

148 Question. In your opinion, knowing the condition of the Savory, and the storm then prevailing, could the Savory have weathered this storm safely or not?

(Objected to by counsel for appellees. No ground has been shown for propounding this question to witness as an expert.)

Answer. It was my opinion, when I left the Savory, that I think she could not. She was at that time taking water in pretty fast. I was the second to the last man that left her. The Tangipaho River lies northwest from the new pickets of this shore. The wind was blowing northwest.

Question. If you had undertaken to save the Savory in her then condition, *how* would you have proceeded to do?

(Objected to as above.)

Answer. From the condition of the Savory, and the direction of the wind and the roughness of the sea, I would have headed her to the wind; that is northeast. I don't consider that there was any other way, for if you had undertaken to turn her around in the through of the sea, she would have gone to pieces; and, it is my opinion, that the only way, to have saved this boat, was to have taken her on the opposite side of the lake—head to the wind.

Cross-examined:

149 I think this happened in the commencement of 1866, about January. I have not had this brought to my mind, particularly, since that time, until lately, when Robert Lanear, jr., brought it to my attention, at my residence at Tangipaho, one day last week. He only told me that Mr. Frigerio wanted me to come to New Orleans to give my evidence. I came here last Monday. Mr. Frigerio came to my residence at Tangipaho last Sunday morning. He told me he wanted me to come to New Orleans with him to give in my evidence in a suit depending between him and the opposite party about the Savory. I came over with him. Did not talk with me, particularly, about this suit; heard him remark about it to the crowd, but did not address himself to me. In 1865, I went towing timber—in charge of tows of timber. I remained at that during 1865 & a part of 1866. The captain himself, the clerk, and this man here, J. R. Holmes, hoisted the white flag. I can swear positively that the captain of the Savory said to the captain of the Laura, I want to abandon the vessel—me and my crew; she is leaking; and he said, That vessel can go to hell, if I can get to the shore. I am

150 positive that the clerk went first on board the Laura; am pretty near positive that the captain went second. I don't know as if I can have a better memory than the captain of the Laura; he appeared very cool then. I would take him to be a man of truth. I know him very well. When I got to the wharf, after leaving the Laura, I came up to the city. When I came away the Savory was laying about where I left her; have never seen her since. I don't think it was more than twenty-five or thirty minutes after I landed on the wharf before I

came up to the city. Immediately on landing on the wharf, I walked up to the hotel, and then took the first train. When I last saw the Laura she was at the wharf. I have crossed the lake three times on the Savory, to the best of my knowledge. Never have been in command of any steamboat; never was an officer on a steamboat; never have been anything but a passenger on a steamboat.

(Signed) W. B. ROBERTSON.

Sworn to and subscribed before me this 11 May, 1870.

(Signed) D. URBAN,
U. S. Comm'r.

JOHN R. HOLMES sworn, says:

151 I was on the Savory on her last trip from the Tangipaho River, as a passenger. I am not able to say what the condition of the Savory was when the storm struck her. I was asleep when the storm first struck her, and when I woke up it was blowing; they were pumping. I went down on the quarter-deck, where the captain was. I found him tieing rope ends to a bale of cotton, & to a small boat which they had on board. I asked him what he was doing, and he told me, You will see, and you will be *dam* glad to take a hold of one of these ropes. At the same time, I went up & the clerk had raised the flag of the United States upside down; and he also got me to assist him about putting up a white table-cloth which they had; and in the mean time a schooner passed in front of us, near by, and asked the captain what he wanted, and the captain remarked, I want to leave this boat; and the captain of the schooner remarked, I can't assist you. The next that drew in sight was the steamer Laura, and the captain of the Laura asked the captain of the Savory what he wanted, and he replied, I want to get ashore; and I think the captain of the Laura asked, Which side shall I come on? and the captain of the Savory said, On the

152 port; and as soon as she got near enough the clerk had got his papers, and I would say, rolled on the Laura, and the rest rushed aboard as fast as they could. When the captain said to the captain of the Laura I want to leave this boat, that is all I heard him say, as far as I can remember. It was blowing so hard, and the confusion was so great, that it was with difficulty that you could hear what he said unless you were standing right near him. The captain got off in a great rush; don't know in what order he got off. He was among the first, and I should say that he was very badly scared. There was great confusion amongst the crew of the Savory before the Laura got to her; they were making preparations to save themselves in case she went to pieces. I am not able to say what kind of a boat the Savory was, but I don't think she was able to stand much bad weather. I have navigated Lake Pontchartrain a little, in the capacity of captain. On this occasion the wind was blowing northwest, as well as I can judge.

Question. If you had undertaken to save the Savory in this storm, what course would you have pursued?

(Objected to as irrelevant, and that it does not appear that this

153 witness is competent to give any evidence on the subject.)

Answer. I should have taken her bow to the wind; she could not have been saved by taking her bow with the wind, because I think if you had undertaken to have turned her around in the sinking condition that she was in, she would have went to pieces. She was in a pretty bad condition when I left her; she was leaking very much, and the hurrican' roof was almost blown off.

Question. From your knowledge of the condition of the Savory &

the storm then prevailing, are you of opinion that she could have weathered the storm in safety or not?

(Same objections as above.)

Answer. I do not; because she was in a leaking condition, and her hurrican' roof was almost gone, and she appeared to be very slightly built; in fact all her upper parts were very slight work. It was considerable of a storm.

Cross-examined:

I live in Tangipaho Parish; this accident happened in 1866; about a month or two after this I was summoned as a witness; for which party I don't know; did not give my testimony, though detained here
154 two weeks; it was not called to my attention again last Sunday, when Mr. Robertson and Mr. Frigerio told me they wanted me to come over to the city and give my evidence. I came with Mr. Frigerio; he talked some—a little—with us about this matter—that he wanted me to come in and give my affidavit, and he wanted me to tell the truth & nothing but the truth. I was present here while Mr. Robertson testified this evening; paid pretty good attention to some things said. I was a captain of a schooner; never was an officer of a steamboat; never have been on a steamboat except as passenger. I was frightened a little, but not a great deal, when this accident happened, because I thought some boat would come to our rescue before she went to wreck; I made no memoranda of the circumstances which I have stated—it is only by recollection. Mr. Frigerio pays my expenses in the city; does not pay me anything for my time; I have not charged him anything; when he came to me about this, he said he would pay my expenses coming and in the city while I was here, and send me back home. I came in last Monday morning; I judged he did not know what I was going to testify to before he said this, nor did anyone
155 else; he did not ask me what I was going to testify. Am not able to state the capacity of the Savory in tons. I judge she was not more than twenty-five or thirty tons. I have no idea about the tonnage of a steamer; I have not made navigation my study. Mr. Frigerio told me here, in the city, to tell the truth and nothing but the truth, as well as I remember. It was Monday night when he told me so.

Question. What lead him to give you that caution?

Answer. I have no idea. I was twenty nine the first of this month. I was born in London, England; that I am told by my elder relatives. I was an infant—not more than two months old—when I left there; then went to Jamaica; am not able to say how long I stayed there; I suppose a short while; from there to St. Louis, am not able to say how long I remained there. My first recollection is New Orleans; was 7 or 8 years old when I left here; then went to St. Tammany Parish, now Tangipaho Parish; have remained there ever since; am farming
156 —principally followed that business going on three years. Did not follow any particular business before I was married; ran a schooner for awhile; lived with my brother a part of the time; run the schooner only about two months; was captain; between New Orleans & Tangipaho; made seven or eight round trips during those two months, and my other business, prior to three years ago, was such as I have stated. The confusion and the condition in which we were in at the time of the occurrence was such that I could not *but* help *to* remember the circumstance. All I can say is that I recollect it and that is all. The circumstances were such as to impress them *to* my mind more than on any ordinary occasion.

Question. Do you recollect the precise words used between the captain of the Laura and the captain of the Savory in 1866; if so, what enables you to?

Answer. I do, because I was paying attention to what the captain was saying. I could not remember a casual conversation of four years ago as well as I do this, as such a case has never come before me.

157 Never was out in such a storm before on this lake; that is what enables me to remember the details of the conversation and of the occurrence. I got off on the shore, and came directly up to town. All that took place on the Savory took place from about 4 in the morning until about 9 in the morning; don't remember what time it was when I came to the city; was on the first train with the clerk, captain, and crew of the Savory. The nearest point to the Savory was the pickets at the entrance to the new canal leading up to the new basin, distant from her, as well as I can judge, between 3½ and 4 miles. From the time the Laura let go of the Savory until she got to the wharf, I judge was between two and three minutes. The depth of the water from this point where the Savory lay to the pickets was from 10 to 12 feet. The entrance to the new canal is a very bad harbor in bad weather—very difficult one to get in in bad weather. I don't think she made more than one attempt to land us; she came up very slow and easy.

Re-direct:

158 When I got on the wharf the officers and crew of the Savory were looking around every minute to see if the Savory had gone down. The captain and the clerk and some of the passengers who were on board, said, looking towards the Savory, She is not down yet.

Question. What did you understand by this statement of the captain and the clerk?

(Objected to as irrelevant.)

Answer. I judge he must have expected she was going to wreck.

Re-cross:

This remark was made to all in general who where standing by. The captain made the remark to no one in particular, that I saw. I did not *see* the clerk make the remark to any one in particular either; and so of the passengers. I cannot name any person whom I remember to have stood by and heard this remark but myself. The remark was made some five or six times. I remarked it myself several times. I made the remark myself two or three times within, I judge, fifteen or twenty minutes. Did not stay there over twenty minutes, if so long. I suppose it was made on an average about once in 2 minutes. There was nothing particular said in this time between the exclamation.

159 There was some drinking and some talking about the Savory. They would go and drink and then walk down to the wharf to see the Savory. I did not remain in one place during these 20 minutes; went in the coffee-house, took a drink, walked out again. The house we took a drink in was fifty yards from where we could see the Savory. The remarks were made in the coffee-house, and outside, and all around. They could see the Savory from the coffee-house by stepping out a few steps. Am just as positive about these remarks being made as I am of any part of my testimony.

(Signed) JOHN R. HOLMES.

Sworn to and subscribed before me this 11th May, 1870.
(Signed) D. URBAN,
U. S. Comm'r.

C. HEINTZ, being sworn, says:

I used to be a merchant at Covington; now reside in New Orleans; was a passenger on the Laura in 1866, when she took the Savory in tow; saw her take the Savory in tow. In my judgment the condition of the Savory was a dangerous one. She was lying there, the waves running over her. Mr. Frigerio took her in tow to bring her in a safe port.
160 I thought she would go to pieces every minute. He took out ropes, fastened the Savory to the Laura from behind, so as to drag. I don't think he could have fastened her on the side, the lake being too rough. He put two men on the Savory; one in the pilot-house. The waves were breaking over her. She was laying exposed to the weather when we took her in tow. The storm was the heaviest that I have seen for 10 years. The Laura, with the Savory in tow, struck for Madisonville in the face of the wind. The Laura had the Savory in tow about an hour or an hour and a half, as far as I recollect, before she commenced carreening over. I saw her turn bottom upwards. The man of the Laura in the pilot-house of the Savory managed to creep over and get on the bottom of the Savory; and the other man, as far as I recollect, got hold of a bale of cotton which was on the Savory. The Laura rescued both of the men with her yawl.

Question. Was there any want of exertion on the part of the officers of the Laura to save the Savory?

(Objected to, on the grounnd that the witness must state what was done, and not his opinion.)

Answer. There was none. They tried everything in their power, as far as I could see, to save her.

Question. Was there any evidence of a want of prudence or
161 skill on the part of the officers of the Laura in endeavoring to save the Savory?

(Objected to for the same reasons as above, and that it does not appear that the witness is competent to give an opinion.)

Answer. They tried everything, in my opinion and judgment, they could to save her, and in a proper manner. I have travelled on the lake from 1851 to 1858, when I moved over the lake, and then travelled constantly until the war broke out, and during the war run the blockade and came to New Orleans twice. I left Covington in 1863, went back to live in August, 1865, and continued to reside there until last December.

No cross-examination.

(Signed) C. HEINTZ.

Sworn to and subscribed before me this 11th May, 1870.
(Signed) D. URBAN,
U. S. Comm'r.

Note of evidence.—Filed May 14th, 1870.

A. W. NORCROSS & AL.
vs.
STEAMER LAURA. } No. 4072.

All the evidence in the transcript is now offered—also, testimony

162 filed 6 & 12th May, 1870, (already copied, see index.) Jno. Slemmer & L. Frigerio, sworn for claimant.

Hearing and submission of cause.—Extract from the minutes of May 14th 1870.

A. W. NORCROSS & AL. *vs.* STEAMER LAURA. } No. 4072.

This cause came on to be heard on the transcript of the record from the district court of the U. S. for the district of Louisiana—
E. C. Billings and A. B. Long for appellees;
Roselius and Philips for claimant & appellant—
And after hearing the pleadings and the evidence the court took time to advise.

Judgment.—From judgment docket.

United States circuit court, fifth circuit, and district of Louisiana, April term, 1870.

NEW ORLEANS, *Monday, May* 16, 1870.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, presiding judge. Absent, Hon. E. H. Durell, district judge.

163 A. W. NORCROSS & AL. *vs.* STEAMBOAT LAURA. } No. 4072.

For reasons orally assigned by the court it is ordered, adjudged, and decreed that the judgment of the district court rendered on the 11th June, 1866, be avoided and reversed; and it is now ordered, adjudged, and decreed by this court that the libel be dismissed and that libellants pay costs in both courts.
Judgment rendered May 16, 1870.
Judgment signed May 20, 1870.
(Signed) W. B. WOODS, *Judge.*

Petition for appeal.—Filed May 27th, 1870.

A. W. NORCROSS & AL. *vs.* STEAMBOAT LAURA. } No. 4072.

To the honorable the judges of the circuit court of the United States for the 5th circuit and district of Louisiana:

The petition of A. W. Norcross, F. W. Perkins, and R. F. Hersey, composing the commercial firm of Norcross, Perkins & Hersey, with respect represent that they are aggrieved by the decree rendered against
164 them by this hon. court on the 20th day of May, 1870, in the cause of A. W. Norcross, F. W. Perkins, and R. F. Hersey, vs. The Steamboat "Laura," her tackle, apparel, &c., & Louis J. Frigerio, her owner, No. 4072 of the docket, and are advised that there is error therein to their prejudice.

Wherefore they pray that an appeal be allowed them therefrom returnable to the next term of the Supreme Court of the United States, upon their giving bond conditioned according to law with good & solvent security thereon in such sum as the court may direct.

(Signed) BILLINGS, & HUGHES, & A. B. LONG,
Proctors for Petitioners.

Order of appeal.—Extract from minutes of May 27, 1870.

A. W. NORCROSS & AL.
vs.
ST'R LAURA, &C., & LOUIS J. FRIGERIO, OWNER. } No. 4072.

On motion of Billings & Hughes and A. B. Long, proctors for the libellants herein, and on presenting and filing petition on behalf of the said libellants, representing that they are aggrieved by the decree of
165 this court herein rendered on the 16th day of May, 1870, and signed on the 20th day of May, 1870, and are advised that there is error therein to their prejudice, & praying an appeal therefrom to the next term of the Supreme Court of the United States, it is ordered that the same be allowed as prayed for, on libellants giving bond conditioned according to law in the sum of five hundred dollars with good & solvent security thereon.

Bond for appeal.—Filed May 27th, 1870.

A. W. NORCROSS, F. W. PERKINS, & R. F. Hersey
vs.
STEAMBOAT LAURA, HER TACKLE, &C. } No. 4072.

Know all men by these presents that we, A. W. Norcross, F. W. Perkins, and R. F. Hersey, composing the firm of Norcross, Perkins & Hersey, represented by F. W. Perkins, as principals, and Charles Clinton as surety, are held and firmly bound, jointly and severally, unto Louis J. Frigerio, Louis Frigerio, jr., and D. Piaggio in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Louis J. Frigerio, Louis Frigerio, jr., and D. Piaggio, their heirs, executors, administrators, & assigns, for which payment
166 well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 27th day of May, in the year of our Lord eighteen hundred and seventy.

Whereas the said A. W. Norcross, F. W. Perkins, and R. F. Hersey, composing the said firm of Norcross, Perkins & Hersey, have this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal to the Supreme Court of the United States from a final decree rendered against them on the 20th May, 1870, in a suit wherein the said Norcross, Perkins & Hersey are libellants and appellees, and the said steamboat Laura and Louis J. Frigerio, her owner, and Louis Frigerio, jr., and D. Piaggio are appellants, No. 4072 of the docket of said circuit court:

Now the condition of the above obligation is, that we, the above-bounden A. W. Norcross, F. W. Perkins, & R. F. Hersey, and Charles Clinton will well and truly pay to the said Louis J. Frigerio, Louis Fri-

gerio, jr., and D. Piaggio, the defendants in said appeal, all such
167 damages and costs as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.
(Signed) NORCROSS, PERKINS & HERSEY,
(In liquidation,)
By F. W. PERKINS. [L. S.]
" CHA'S CLINTON. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.

168 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit, and district of Louisiana, do hereby certify that the foregoing 167 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of A. W. Norcross, F. W. Perkins, & R. F. Hersey vs. Steamboat Laura, her tackle, apparel, &c., No. 4072 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 22d day of November, A. D. 1870.

[SEAL.] D. URBAN, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 22 day of November, A. D. 1870.

E. H. DURELL, *Judge.*

169 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to D. Piaggio, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & an order of record & filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein A. W. Norcross, F. W. Perkins, and R. T. Hersey are libellants and appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said libellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and seventy.

W. B. WOODS, *Judge.*

(Indorsed:) United States circuit court. No. 4072. A. W. Norcross, F. W. Perkins, & R. T. Hersey vs. Steamer Laura & Louis J. Frigerio, her owner. Citation of appeal. D. Piaggio.

Marshal's return.

Received May 28, 1870, by the U. S. marshal, and on the 13th day of June, 1870, served a copy of the within citation of appeal on the within-named D. Piaggio, through Alfred Philips, his attorney, by delivering the same to him, said att'y, in person, at his office, No. 78 Custom-house st., in this city.

New Orleans, June 13th, 1870.

S. W. REED,
D'y U. S. Marshal.

170 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Louis J. Frigerio, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & an order of record & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein A. W. Norcross, F. W. Perkins, and R. T. Hersey are libellants and appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said libellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and seventy.

W. B. WOODS, *Judge.*

(Indorsed:) United States circuit court. No. 4072. A. W. Norcross, F. W. Perkins, & H. T. Hersey, vs. Steamer Laura & Louis J. Frigerio, her owner. Citation of appeal. Louis J. Frigerio.

Marshal's return.

Received May 28, 1870, by the U. S. marshal, and on the 11th day of June, 1870, served a copy of the within citation of appeal on the within-named Louis J. Frigerio by delivering the same to him in person at the office of Louis Frigerio, jr., No. 50 Chartres street, in this city.

New Orleans, June 11, 1870.

S. W. REED,
D'y U. S. Marshal.

171 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Louis Frigerio, junior, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & an order of record & filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein A.

W. Norcross, F. W. Perkins, and R. T. Hersey are libellants and appellants, and you are defendant, to show cause, if any there be, why the judgment rendered against the said libellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and seventy.

W. B. WOODS, *Judge.*

172 (Indorsed:) United States circuit court. No. 4072. A. W. Norcross, F. W. Perkins, & R. T. Hersey vs. Steamer Laura & Louis J. Frigerio, her owner. Citation of appeal. Louis Frigerio, junior.

Marshal's return.

Received May 28, 1870, by the U. S. marshal, and on the 11th day of June, 1870, served a copy of the within citation of appeal on the within-named Louis Frigerio, jr., by delivering the same to him in person at his office No. 50 Chartres street, in this city.

New Orleans, June 11th, 1870.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover:) No. 319. A. W. Norcross, F. W. Perkins, and R. F. Hersey, lib'ts, appellants, vs. The Steamboat "Laura," her tackle, &c., Louis J. Frigerio & al., cl'm'ts. Louisiana C. C. U. S. Filed 1st December, 1870.

Supreme Court of the United States.

DECEMBER TERM, 1871.—No. 120.

A. W. NORCROSS et al., Libellants,
APPELLANTS.

vs.

THE STEAMBOAT LAURA, LOUIS FRIGERIO et al.,
APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF OF APPELLANTS.

J. HUBLEY ASHTON,
Of Counsel.

McGill & Witherow, Printers, 1107 E street, Washington, D.C.

Supreme Court of the United States.

DECEMBER TERM, 1871.

A. W. NORCROSS, F. W. PERKINS, and R. F. HERSEY, Libellants, Appellants,

vs.

THE STEAMBOAT LAURA, LOUIS FRIGERIO *et al.*, Claimants.

No. 120.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

STATEMENT OF THE CASE.

The appellants filed, in the District Court for the Eastern District of Louisiana, a libel *in rem* against the Steamboat Laura and *in personam* against Louis Frigerio, her owner, in a cause of damage, for a maritime tort, whereby the Steamboat W. B. Savory and freight, the property of the libellants, became a total loss. (Record, pp. 1, 2.)

A claim for the vessel was filed by Louis Frigerio, (Record, p. 5,) who also interposed an answer to the libel. (Record, p. 7.)

Testimony was taken on the part of the libellants and claimants; and, on June 15, 1866, the District Court entered a decree, in favor of the libellants, for the sum of four thousand dollars, with interest and costs, against the Steamer Laura and against Louis J. Frigerio, her owner, *in personam*, and rendered judgment for that amount on the stipulation substituted for the vessel. (Record, p. 46.)

The claimant and sureties thereupon appealed to the

Circuit Court; when additional testimony was taken on behalf of the claimant. And, on the 20th of May, 1870, the Circuit Judge, Hon. W. B. Woods, entered a decree reversing the decree of the District Court, and directing that the libel be dismissed and that the libellants pay costs in both Courts. (Record, p. 57.)

The libellants thereupon appealed to this Court from the decree of the Circuit Court.

Abstract of Pleadings and Proofs.

1. The libel avers, that the libellants were owners of the Steamboat W. B. Savory, which was employed by them in transporting freight on Lake Ponchartrain, by regular and daily trips, between New Orleans and the New Basin therein and the ports of Madisonville and Covington, in the parish of St. Tammany; that on Saturday, January 19, 1866, the Steamer Savory, being safely anchored in the Lake, off Lakeport, and a short distance from the shore, was taken by the Steamboat Laura, under the direction and at the instance of her owner and manager, Louis Frigerio, Jr., from her anchorage, and towed out into Lake Ponchartrain, and there sunk; and that the Savory and her freight became thereby a total loss.

The libel also avers, that the Savory was, at the time, neither abandoned nor in need of assistance; that she was not so taken and towed into the Lake with any purpose on the part of the owner or master to save her; and that, in any event, the improper and unskillful management of the Savory on the occasion rendered her desturction inevitable.

It further states, that the owner of the Steamer Laura was on board of her at the time of the unlawful taking of the Savory, and that the libellants have sustained damages to the amount of seventeen thousand dollars.

The answer of the claimant and respondent, Frigerio, admits that he was the owner of the Steamboat Laura, and states that this vessel was also engaged in daily plying

between New Orleans and the ports of Mandeville, Madisonville and Covington.

It then avers that, at the time in question, The Savory was abandoned and in a sinking condition; and that she was taken in tow by The Laura, in the manner stated in the libel, with the intention of towing her to a safe harbor in the Tchefuncta river.

The answer proceeds to state, that after The Laura had been towing her, with proper care, for about two hours, The Savory suddenly capsized and sunk; and that, though every effort was made to save her cargo, it was also lost.

The answer also avers that the efforts of The Laura to save The Savory and her cargo in this manner, as alleged, were prompted by charity and moral duty; and denies that the steamer Savory was seaworthy, or was fully equipped and manned, or had a right to carry passengers.

2. The libellants' proofs consist of the depositions of the following persons:

T. E. Cranmer, (captain of Savory,)	Rec.,	p. 9.
G. C. Norcross, (clerk of Savory,)	"	p. 11.
Antonio Marco, (pilot of Savory,)	"	p. 15.
C. E. Dayton, (on steamer Vivian,)	"	p. 25.
W. D. Craft, (shipcarpenter,)	"	p. 29.
R. J. Brenan, (passenger on Laura,)	"	p. 38.
H. C. Rariden,	"	p. 39.
C. T. Estlin, (passenger on Laura,)	"	p. 40.
Geo. Dougall, (of steamer Alexandria,)	"	p. 41.

The other depositions in the record were taken on the part of the claimant and respondent, Frigerio.

3. The important facts, as developed by these proofs, appear to be these: *The Savory* and *The Laura* were opposition boats, running on Lake Ponchartrain, by regular trips, between New Orleans and the same towns in the parish of St. Tammany. The record discloses the fact, that there was a good deal of rivalry between them, and jeal-

ousy and ill feeling on the part of the owner and manager of The Laura.

The Savory, on one of her regular trips from Covington to New Orleans, with freight on board and timber in tow, was met, after having crossed the Lake, about three o'clock in the morning of Saturday, January 19, 1866, by a head wind and a fog, which rendered it difficult or impossible for her to reach the landing, and induced the captain to come to anchor about, he says, ½ a mile from the pickets, or 1½ mile from the shore. (Rec., p. 10.) After daybreak the wind increased, and changed to the northwest, when the tow was loosened from the steamer and anchored.

The gale was, doubtless, quite severe, and the Lake very rough. The passengers on The Savory appear to have been alarmed for their personal safety, and anxious to get off the vessel; and the captain was desirous of procuring a tug to tow the steamer into one of the basins or canals near by, communicating with the City of New Orleans.

In this situation, about 10 o'clock in the morning, the Steamer *Laura*, belonging to the claimant, who appears to have been on board, was descried making her way to the Ponchartrain Railroad Wharf, three or four miles distant. The captain of *The Savory* signalled her by blowing the whistle. (Rec., p. 10.) The passengers, it seems, made a signal of distress. (Rec., p. 12.)

The Laura came alongside. The captain was asked to take The Savory's passengers to the shore. (Rec., p. 12.) The people on The Savory then got aboard of The Laura, and were landed on the wharf.

Captain Cranmer, of The Savory, informed the captain of The Laura that he was going ashore to get a tug to bring his steamer in, (Rec., pp. 10, 12, 15.) This is well attested. It appears, that about half an hour after The Laura had landed the people from The Savory she returned to that steamer, took her in tow, and started to sea with her.

It is not pretended anywhere in the pleadings or proofs that the master or owner of The Laura was authorized by

the Captain of The Savory to do this, or, indeed, to touch the vessel. The master of The Laura was distinctly informed by Captain Cranmer that he intended to have the vessel towed into the Old Basin, and that he was going to get a tug for that purpose.

It is proved by the evidence for the claimant that The Savory was anchored not more than three or four miles from the entry of the Old Basin, and somewhat nearer the New Basin. (Rec., p. 19.)

Although The Savory was thus at anchor, "*riding the waves beautifully*," as one of the witnesses states, (Rec., p. 41;) although the master or owner of The Laura confessedly had no authority or permission of any kind to remove The Savory, and knew that Captain Crammer intended to have her towed into the basin; although she might easily have been towed into the New or the Old Basin, if the master of The Laura really meant to save her; and although the master of The Laura professes to have believed she would have gone down at her anchorage if he had never touched her; nevertheless, he cut her anchor chain, attached a hawser to her, and attempted to cross the Lake, a voyage of thirty miles and more, in the face of a head wind and a rough sea, with The Savory in tow.

The result was as might have been expected. In three hours, the gale being very heavy, little or no progress was made, but The *Savory*, as a passenger on the Laura, an eye-witness, states, "*was pulled to pieces and went down, bow forward.* (Roc., p. 38.)

The account given of the transaction by this witness, as well as that given by W. H. Smith, one of the men who was put on The Savoy from The Laura, when she was taken in tow, (*Rec., p.* 20,) show that the allegation of the Third Article of the libel is strictly true, that The Laura, without the request or permission of the master of The Savory, *wrongfully took that vessel from her anchorage, and towed her out into Lake Ponchartrain, and there sunk her.* (*Libel, Rec., p.* 1.)

Dep. of R. J. Brenan, Ib., p. 38.
" " W. H. Smith, Ib., p. 20.

It is difficult, after reading the whole evidence, to refrain from believing that this act was done with a deliberate purpose on the part of the master of The Laura, and doubtless the owner, Frigerio, who was on board at the time, to destroy The Savory. But it is not necessary, of course, that the court should believe this, in order to condemn The Laura and her owner in damages for the trespass.

Mr. Brenan, who was merely a passenger on The Laura during this trip, and not connected in any way with either vessel, and thus entirely impartial, states that it was his opinion, and that of every one else with whom he conversed on board The Laura, that *The Savory could not stand the towing.* He says: "With the wind dead ahead, and The Laura being a much heavier vessel than The Savory, I deemed it an act of imprudence on the part of The Laura to attempt crossing The Savory to the other side of the Lake; *for we had then some* 20 *miles to go in the face of a head sea.* I think that The Savory sunk from ½ to a mile from the place where we had taken her. We started from the wharf in The Laura at ½ past 2. I judge we had made ½ or 1 mile when The Savory sunk. At that time we must have been from 2 to 2½ miles from the shore." (Rec., pp. 38, 39.)

The owner of The Laura, Frigerio, was personally cognizant of what the master did, and, indeed, acquiesced in it.

The master of The Laura himself states that he went to Mr. Frigerio, who was on board, and told him that he intended to take The Savory in tow. "He replied that he knew nothing about it; that I was the captain of the boat, and had to exercise my discretion. I then started from the railroad, and went for The Savory."

Dep. of Captain, Rec., p. 17.

Other witnesses testify that Frigerio was on board, and, of course, knew all that the master did.

Dep. of C. T. Estlin, Rec., p. 41.

The *fourth* article of the libel is thus also fully proved. (Rec., p. 2.)

The proofs show that the master of The Savory went at once to the city, and engaged the tug-boat Alexandria to go after the steamer. The Alexandria was lying in the new basin; and on Sunday, the next morning, she started to find The Savory. At Madisonville the loss of The Savory appears to have been first made known to the master and owner, and they then returned with the tug to New Orleans.

Dep. of Dougall, (engineer of tug,) Rec., p. 42.

As to the value of The Savory, proof is found in the record to show that it exceeded the amount allowed to the libellants by the District Court. This proof will be hereafter mentioned.

These are the principal facts of the case; and we shall contend that they entitle the libellants to damages, and that the decree of the district court should have been wholly affirmed by the Court below.

Statement of Errors Relied On.

1. The Circuit Court erred in reversing the decree of the District Court, which assessed the damages of libellants at $4,000, and in directing the libel to be dismissed at the cost of the libellants; and it should have entered a decree affirming the decree of the District Court.

2. If the District Court erred in the assessment of damages, and its decree awarding to the libellants $4,000 was thus properly reversed by the Circuit Court, nevertheless that Court erred in directing the libel to be dismissed and the libellants to pay costs in both courts; as the libellants were, under the evidence, entitled to some, if only nominal, damages.

Argument for Appellants.

The decree of the Circuit Judge must have proceeded on one or other of two grounds: either that the master of The Laura never did the acts complained of, or that, though

prima facie a trespass was committed, the respondent showed a legal and valid justification. The answer, however, admits the acts alleged in the libel, and all the evidence on both sides proves them. The latter, therefore, must have furnished the ground of the decree below.

The condemnation of the libellants to pay costs in both courts also implies that the Circuit Judge thought the suit was commenced without sufficient ground, in fact or in law, to warrant its institution.

This appeal thus presents two questions: 1*st*. Whether the act of *The Laura* was an injury to the libellants, for which the vessel and owner are liable in damages; and, 2*d*, whether the damages were properly assessed by the District Court under the evidence?

If this Court are with the appellants on both questions, the decree of the Circuit Court must be reversed, with directions to affirm the decree of the District Court.

If the Court, however, should agree with the appellants only on the question of liability, and should be of opinion that there was error in the assessment of damages by the District Court, still the decree of the Circuit Court, *dismissing the libel*, must be set aside and reversed.

I. Question of Liability.

First. The Savory, at the time she was taken by The Laura, was not derelict or abandoned, as averred in the answer. The owners were in constructive, if not actual, possession of her at that time.

1. What constitutes a case of *derelict* has been authoritatively defined by this Court.

"To constitute a case of derelict, the abandonment must have been final, without hope of recovery, or intention to return. If the crew have left the ship temporarily, with intention to return after obtaining assistance, it is no abandonment, nor will the libellants be entitled to salvage as of a derelict."

The Island City, 1 Black, 128.
Same case, 1 Clifford, 221.

The British Admiralty authorities are likewise full and clear to the point, that in every case of derelict there must be an abandonment *animo derelinquendi;* and that the intention *at the time of leaving* is the point on which the question of derelict must be decided.

The Cosmopolitan, 6 Notes of Cases, xxiv.
The Aquila, 1 C. Rob., 40.
The Barefoot, 16 Jurist, 841.

By the *spes recuperandi* is meant, not what was the precise state of things, but what was the intention by which the master was actuated at the time.

The Sarah Bell, 4 Notes of Cases, 146.

2. It would be preposterous, even if there were no affirmative and positive evidence on the subject, to conclude that the master, in this case, abandoned the steamer, and left her a derelict. But the evidence affirmatively shows, that he left her temporarily, for the purpose of obtaining a tug to tow her into the basin. Conclusive proof of his purpose is furnished by his subsequent acts in execution of his original intention of obtaining assistance. We have seen that he went at once to New Orleans, and engaged the services of the steamer Alexandria, and followed The Savory with her to Madisonville.

Dep. of Dougall, Rec., p. 42.
Dep. of Whittemore, Rec., p. 37.

SECOND. Being thus in the legal possession of the owners, and knowing the purpose and plan of the master, the commander of The Laura had no right to take possession of The Savory, without the authority or consent of the master or owners; and such unauthorized and illegal act constituted a trespass, for which the owners of The Laura are liable. And this proposition would be true, even if it could be shown, as it cannot, that The Savory was in a sinking condition, and the intention was *bona fide* to save her.

1. The law is well settled, that salvors cannot force themselves upon vessels in distress against the will of the

master. "It is at his option," says Judge Sprague, "to accept their services or not; and if he refuse them, compensation cannot be recovered for assistance subseqently rendered against his will."

The Brig Susan, 1 Sprague, 502.
The Dodge Healey, 4 Wash. C. C., 651.
The Bee, Ware, 332.

The case of a fraudulent attempt on the part of the master to destroy the vessel presents different considerations.

Marvin on Wreck and Salvage, 112.

In *The Barefoot* (14 Jurist, 841) Dr. Lushington well says: "The authority of the owners and underwriters remains, and they have the right *to employ what means and persons they like to secure their own property.* The consequences of a contrary doctrine would be, that all the ships sunk in the Thames would be at the mercy of the first finder."

In the case at bar, the master and owner of The Laura were distinctly informed of the intention of the master of The Savory to tow the vessel into the Basin, and they knew he was on his way to New Orleans to make arrangements to that end; and, being thus informed, whatever the condition and situation of the property were, and however sincere their desire might have been to save The Savory, they had no legal right to take the matter into their own hands, and interfere with the rightful purpose of the owners of the property.

The *animus revertendi* continued with the master; and, being known to the master of The Laura, was in law operative and effectual as an actual occupancy of the vessel, and manifestation to him of a continuing possession.

The case of intended salvors, who find property apparently deserted by its owners, in a situation of peril, and who, without any knowledge or notice of the intention of its owners of returning and saving the property, *bona fide* take possession of the property and save it, presents a very different transaction.

2. In the present case, however, we deny that the property was in such imminent peril as could justify the taking, under any circumstances, without the consent of the owners. And we moreover deny that these parties were actuated by a sincere and honest purpose to save this vessel. On the contrary, we contend that their object was to destroy her.

THIRD. Whether or not the master of The Laura would have been justified, under the circumstances, in towing the Savory into the Basin, near which she was at an anchor, he cannot justify the act of taking her from her anchorage and attempting to tow her across the Lake to Tchefuncta River; and, whatever his intention was, he must be deemed a trespasser in thus dealing with the property.

That The Savory was destroyed and lost to the owners by these acts of The Laura, and that it was the grossest imprudence and negligence on the part of The Laura, to say the least, to attempt to tow this vessel across the Lake, no man who reads this record can doubt.

Express Co. *vs.* Kountze Bros., 8 Wall., 353.

FOURTH. It is a just conclusion from the evidence that the masters and owners of The Laura intended to destroy the little vessel.

We shall not review the evidence in detail. The *res gestæ*, however, prove a very clear case of guilty intent to to injure the libellants, though it is not necessary to show this in order to render the master and owner of The Laura liable as trespassers.

The Laura and The Savory were opposition boats. (Rec., p. 30.)

Mr. Estlin, a passenger and an eye-witness, says: "Mr. Frigerio threw the whole responsibility on the captain. *The captain, previous and afterwards, stated that the fate of The Savory would be the fate of all high-pressure boats on the Lake.*" (Rec., p. 41.)

It was an attack on high-pressure boats.

It is inconceivable how the Circuit Court could have

dismissed the libel, and condemned the libellants to pay costs in both courts.

II. Question of Damages.

Having shown that, in any and every view of the case, the act of the master of The Laura, complained of in the libel, was a trespass, for which the owner is liable *in personam*, and the vessel, with which the trespass was committed, *in rem*, the decree of the Circuit Judge, dismissing the libel, whatever view may be taken of the matter of damages, was erroneous. But we contend that the decree of the District Court should also have been affirmed as to the damages.

It is plain the District Court allowed neither *consequential* nor *exemplary* damages. The case would have well warranted the latter.

It is also clear that the District Court did not allow even the full value of the vessel.

The Enrollment and license show the size and character of the Steamer. (Rec., pp. 43, 44.)

The deposition of H. C. Rariden shows that she might have been sold for $9,000. (Rec., p. 40.) He says at that time (1866) boats like The Savory were very scarce, and commanded a very high price. William D. Craft proves that she was a good, strong boat, thoroughly sound, and ship-shape. (Rec., p. 29.)

The claimant gave a release bond for $25,500. (Rec. p. 5.)

Her average income was $230 a trip. (Rec., p. 37.)

The testimony introduced by claimant proves that The Savory would have ridden out the gale if she had been left alone; that she was not leaking when the passengers left her; and that she was literally pulled to pieces in the towing by The Laura. (Rec., pp. 31, 33, 34.)

Under these circumstances, the damages were assessed low enough by the District Court at $4,000, being less than one-half of her proved value; and the Circuit Court should have affirmed the decree for that amount.

J. Hubley Ashton,
Of Counsel for Appellants.

Marvin Wood

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1870.

A. W. NORCROSS, F. W. PERKINS, AND OTHERS, APPELLANTS,
vs.
THE STEAMBOAT LAURA, &c.

No. 319.

Appeal from the Circuit Court of the United States for the District of Louisiana.

Brief of Counsel of Appellees.

The plaintiffs below and appellants here sued in admiralty *in rem* and *in personam*, claiming seventeen thousand dollars for damages alleged to have been suffered by libellants as owners of the steamboat W. B. Savory.

They averred that on the 19th January, 1866, the Savory was safely anchored in Lake Ponchartrain, near Lakeport, in the parish of Orleans, within half a mile of the shore.

That at the request of the master of the Savory, the steamboat Laura took a portion of the Savory's crew and conveyed them to the shore, and then, without the request or permission of the master of the Savory, or any one representing her, and when she was neither abandoned nor in need of assistance, the said steamer, Laura, under the direction of Louis Frigerio, Jr., wrongfully took the Savory from her anchorage, towed her out into Lake Ponchartrain, and there sunk her, whereby she, together with

her engine, tackle, apparel, furniture, and freight, became a total loss.

See Rec., p. 1.

The Laura, having been arrested on an admiralty warrant issued on the prayer of this libel, was claimed by Louis Frigerio, (see Rec., p. 5,) and released on bond in the sum of $25,000.

Rec., pp. 5 and 6.

The answer of Frigerio to the libel averred that on the 19th January, 1866, the Laura was performing a regular trip across Lake Ponchartrain, from Madisonville to Lakeport, and at about 10½ A. M., when nearing the wharf of the Ponchartrain railroad, her regular landing-place, the wind being very high and the weather very rough, the Savory was seen about three miles to the west, in distress, her colors flying and Union down; that in charity, and at great risk and peril, the Laura turned from her course to go to the relief of the Savory; that when within hailing distance the master of the Savory called out "to save the passengers and crew and let the boat go down." The Laura then came near, and succeeded with great risk, and after great effort, in rescuing the twenty-seven passengers, with the officers and crew of the Savory, and taking them to the Laura's landing, where they were put on shore.

See Rec., p. 7.

The answer says, further, that the Laura then discharged her cargo, and having taken on board other freight, and also passengers, in about one and a half hours after proceeded on her return trip to Madisonville, as usual; that the Savory was abandoned in a sinking condition, with the sea breaking over her; the Laura neared to save the cargo and vessel, but, from the rough

sea and high wind, was unable to get near enough, and could only attach a hawser to and put three men on board of her, and thus took her in tow, with the intent of towing her to a safe harbor in the Tchefuncta river; that in about two hours, while towing her with due skill and caution, the Savory was suddenly capsized by the sea-water in her *hold!* and sunk; that every effort was made to save part of her cargo, but in vain.

See Rec., p. 8.

After hearing evidence and argument, the district court gave judgment in favor of libellants for $4,000 and interest.

See Rec., p. 46.

From which the claimants appealed to the circuit court, where further evidence was heard; where, on the 16th of May, 1870, the judgment of the district court was reversed, and the libel dismissed with costs.

See Rec., p. 57.

From which the libellants have appealed to this court.

POINTS.

First. The libellants' steamboat Savory, unfavorably constructed for the navigation of Lake Ponchartrain, a body of shallow water often visited by fierce gales, was caught, on the night of 18th and 19th January, 1866, in a storm of unusual violence, which she was unable to withstand and in which she was destined to perish.

Captain Cranmer, of the Savory, describing his voyage across the lake, says: "The weather was beautiful all the voyage across the lake until we arrived on this"—the southern—"side of the lake; weather very foggy and dark."

Rec., pp. 9, foot, and 10, top.

Antonio Marco, pilot of the Savory, says: "The forepart of the night from Friday to Saturday was good prior to 9 o'clock, when it began to get foggy, rainy, and dark. After 12 o'clock, it commenced to blow from the land—south wind—and it blew very hard."

See Rec., p. 15, fol. 40.

R. L. Brenan, a witness for libellant, says: "We had a very heavy gale."

See Rec., p. 38, middle; fol. 111.

W. H. Smith, a witness for claimant, says: "The weather was then of the roughest kind I ever saw on the lake."

See Rec., p. 20, fol. 58.

I. M. Tate, a witness for claimant, says: "The weather was very rough; wind and waves very high. The roughest weather I ever *seen* on the lake."

See Rec., p. 24, fol. 68.

R. M. Lanier, a passenger on board the Savory, and a witness for claimant, says: "The storm the Savory was in was a dangerous one—a very dangerous one."

See Rec., p. 50, fol. 143.

The Savory was a high-pressure side-wheel steamboat of only forty tons.

See Rec., p. 10, fol. 26.

Leonard Bollinger, captain of the Laura, says: "The Savory was not fit for the lake; was a high-pressure boat, too small, and not built for the lake."

Rec., p. 18, fol. 51.

"Had the Savory remained where she was, and with the weather that prevailed, she would have gone down in

six hours, I believe, as the norther blew until next day, and harder that night than in the daytime."

Rec., p. 20, fol. 56.

W. H. Smith says: "I don't think the Savory, kept at anchor, could have ridden out the gale. I think she would have filled with water and capsized."

Rec., p. 21, fol. 61.

Charles W. White says: "From my experience of lake navigation, I think the Savory would have come out of the storm on certain conditions. She would have done it had they cut her chimneys down, torn the cabin off, and threw off the deck load."

Rec., p. 32, fol. 94.

The waves swept through her first deck.

Rec., p. 33, fol. 96.

R. M. Lanier, a passenger, says she could not have survived the storm.

Rec., p. 50, fol. 142.

W. B. Robertson: "It was my opinion when I left the Savory that she could not weather the storm."

Rec., p. 52, fol. 158.

John R. Holmes, another passenger, says the same.

Rec., p. 54, top.

Second. The master, officers, crew, and passengers of the Savory, after she had been anchored off the southern shore of Lake Ponchartrain, were highly alarmed, and were making preparations to abandon her and save their own lives before the Laura came to their assistance.

Charles W. White, a passenger on the Savory, says: "The captain and clerk had a consultation, and said if

they could get some steamboat with them they would abandon the Savory, as they did not consider that she was safe."

Rec., p. 31, fol. 90.

"The captain and the pilot were on the first deck aft when they said they must leave the boat because they could not take her into either of the basins."

Rec., p. 52, fol. 94.

R. M. Lanier, a passenger, says: "After the storm struck the Savory, occasionally a large wave would go over her and put the fire out. The captain ordered his men continually to keep the pumps at work by hand. There was great confusion on board. This confusion was not confined to the passengers; it was general, and more among the officers."

Rec., p. 50, top.

Preparations were made to leave the boat prior to the coming up of the Laura. The preparations were these: There was one metallic boat aboard, and one bale of cotton. Captain Kramer ordered his men to place a line all around the top of this metal boat, and secure it there, and to fix loops on this bale of cotton for people to hold to it, in case she went to pieces.

Rec., p. 50, fol. 142.

"The captain said he could not manage her. I insisted on his getting anchor up; he said he could not take it up—could not manage her; that she would strike bottom and go to pieces immediately."

Rec., p. 50, fol. 143.

Wm. B. Robertson, a passenger, says: "The officers of the boat *blowed* their whistles, &c. I asked the captain what was the matter; he said he thought the vessel

would be lost; wanted assistance; wanted to get away." (Rec., p. 51, fol. 146.) Speaks of the preparations with the life-boat and the bale of cotton.

Rec., p. 51, fol. 147.

John R. Holmes, a passenger, says: "I found him, the captain, tying rope-ends to a bale of cotton and to a small boat which they had on board. I asked him what he was doing, and he told me, 'You will see, and you will be *dam* glad to take a hold of one of these ropes.'"

Rec., p. 53, fol. 151.

"There was great confusion amongst the crew of the Savory before the Laura got to her; they were making preparations to save themselves, in case she went to pieces."

Rec , p. 53, fol. 152.

Third. The Savory made signals of distress, which were seen by the Laura, and when the latter came to her assistance her officers and crew made haste to escape, abandoned her completely, and expected to see her sink.

George C. Norcross, clerk of the Savory, says: "The captain of the Savory signalled the Laura by blowing a steam-whistle. Another signal was made by the passengers and myself; we hoisted a little flag that we had the Union down."

Rec., p. 12, fol. 30.

Thomas W. Crawford, passenger on the Laura, says: "The Savory had the flag of the Union down, which was said to mean a flag of distress, and besides she had two sheets flying."

Rec., p. 13, fol. 36.

"After the Laura was brought a second time alongside of the Savory, there was a general scramble and confu-

sion on the Savory ; every one tried to leave her as quick as possible and get on the Laura."

Rec., p. 14, fol. 36.

There was every appearance that the Savory had been abandoned. I did not see any one remain on the Savory.

Rec., p. 14, fol. 37.

Dollinger, captain of the Laura, says: "After they came all aboard the Laura, I asked the captain of the Savory to sing out to one of his men to let the line go, so I could back out from the Savory, but there was not one man on board to do it."

Rec., p. 17, fol. 47.

"When I backed away from the Savory, the captain and his clerk came upon the boiler deck and told me, 'there is $5,000 gone to the devil.'"

Rec., p. 17, fol. 47.

Charles W. White, passenger, says: "Between 8 and 9 o'clock the American flag was hoisted, Union down, which is a signal of distress."

Rec., p. 31, fol. 90.

"All the passengers, officers, and crew of the Savory got on the Laura, with such effects as they could throw on the Laura. There was nobody left on board the Savory."

Rec., p. 31, foot.

Charles E. Whittemore, United States inspector of steamboat-boilers, says he was standing on the wharf when the Laura came in with the people from the Savory. He asked Captain Cranmer, of the Savory, what was the matter. Cranmer said "the damned thing had gone or would go down to hell pretty soon."

Rec., p. 36, fol. 105.

John R. Holmes, a passenger, says: "When the captain and clerk of the Savory got on shore, they looked toward her and said she is not down yet, as if they expected she was going to wreck."

Rec., p. 55, fol. 158.

Fourth. When the Savory went to the Laura a second time, and found the abandoned vessel in such a condition as to render her speedy ruin inevitable, the Laura made an attempt, lawfully and in good faith, to save her, and the act was meritorious, though the event was unfortunate.

Crawford, passenger on the Laura, says: "When I say that the Savory appeared to be abandoned, I meant that there was no one left on board."

Rec., p. 14, fol. 38.

Bollinger, captain of the Laura, says: "After the 1 o'clock train came down, I went to Mr. Frigerio, the owner of the boat, the Laura, and told him it was my duty to go over there and save that steamer, the Savory, and asked him if he would let me go over. He replied he knew nothing about it; that I was the captain of the boat, and could exercise my own discretion.

Rec., p. 17, fol. 48.

"Put three men on the Savory to keep her clear of water if they could. Laid alongside of her about ten minutes, when I started ahead, towing her for the Tchefuncta river.

Rec., p. 17, fol. 48.

"I got her free from her anchor by causing her chain to be cut. The waves were dashing over her at that time. Took her some ten or twelve miles into the lake before she capsized."

Rec., p. 19, fol. 54.

"My intention was to save the boat, if I could, by towing her into smooth water on the north shore, which was the only place where there *were* smooth water."

Rec., p. 19, fol. 55.

"Had the Savory remained at anchor where she was, and with the weather that prevailed, she would have gone down in six hours, I believe, as the norther blew until next day, and harder that night than in the day time."

Rec., p. 20, fol. 56.

W. H. Smith, fireman on the Laura, says: "We then proceeded to the Ponchartrain railroad and landed the passengers and crew of the Savory there. After we had landed there I heard the captain of the Laura say: 'As we have saved the passengers and crew, we better try and save the boat,' and we proceeded to do so."

Rec., p. 20, fol. 58.

"Made fast the Laura to the Savoy and started, having her in tow; went to see how much water she had; found six inches above her skin, which is usually six inches above the bottom. Hatchway was covered with too small a hatch; all the water that broke over was continually going through the hatchway into the hold.

"Tried to relieve the Savoy by throwing over the lumber she had on board, and the Laura was stopped to put more men on board for that purpose, but could not succeed, the weather being too rough."

Rec., p. 21, fol. 59 and 60.

"After the boat went over I saw the white man floating on the ladder, and the black man came up on the right side of the boat. They were picked up by the Laura."

Rec., p. 21, fol. 60.

"The chimney-guys were broken when I first went on board."

Rec., p. 22, fol. 63.

Frank Newman, pilot of the Laura, says: "After we had got our freight and passengers, the captain told me to steer for the Savory, which I did." (Record, p. 26, foot.) "We did so, and put three of our men on board; gave them lines to make fast; we started ahead; we had run ten or twelve miles off shore to the Madisonville side, when the captain told me to stop the boat, as the Savory had capsized; when I turned round I saw the Savory turned up on her bottom and three men on her, two on her bottom and one on the ladder, floating; these men were picked up."

Rec., p. 27, fol. 77.

"I could not say what was the object in taking the Savory across the lake; the captain said it was to save her."

Rec., p. 27, fol. 79.

"Had the Savory gone some eight miles further she would have been in smooth water and been perfectly safe. Don't think she would have stood it out at the Ponchartrain wharf, as the sea rolled too heavy at that wharf."

Rec., p. 28, fol. 82.

L. Folger, passenger on the Laura, says: "Left the end of the railroad, and took the Savory in tow. The Savory was then lying at anchor. The waves were breaking over the Savory's bow."

Rec., p. 34, fol. 99.

Fifth. The libel in the case is framed with remarkabl insincerity, and suppresses altogether the truth and the facts of the case.

Sixth. The Savory was really derelict, and on a smaller scale the case strongly resembles that of the "L'Esperance." (1 Dodson, p. 46.)

Seventh. The true test of this case lies in the solution of these questions: "Would the Laura have been entitled to salvage had she taken the Savory into safe water on the northern shore of the lake?" "Did the captain of the Laura, exercising a fair judgment, believe the Savory to be in danger?" And was he making, in good faith, a prudent effort to save her?

Respectfully submitted.

THOMAS J. DURANT,
For Appellee.